

No. 10629

United States *VHL*
Circuit Court of Appeals
For the Ninth Circuit. *2371*
—

CLARENCE O. FLANNAGAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.
—

Transcript of Record
—


Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

MAY 22 1944

PAUL P. O'BRIEN,

CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Petroleum Building
Olympic at Flower
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For Appellee:

CHARLES H. CARR,

United States Attorney

JAMES M. CARTER,

Assistant United States Attorney

ERNEST A. TOLIN,

Assistant United States Attorney

600 U. S. Post Office and Court House Bldg.
Los Angeles 12, Calif. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

At a stated term, to-wit: The February Term, A D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 15th day of July in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable C. E. Beaumont, District Judge.

No. 16-107-Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs

CLARENCE O. FLANNAGAN,

Defendant.

On motion of R. F. Duni, Esq., Assistant U. S. Attorney, appearing for the Government, who presents an Information to the Court in this cause, it is ordered that said information be filed, that the bond of the defendant Clarence O. Flannagan be, and it hereby is, fixed in the sum of \$1,000.00 and that a bench warrant be issued for the apprehension of the said defendant.

F. M. Harvey, reporter, present and reporting the proceedings. [2]

\$1,000 Bond B/W

This Information contains twelve (12) Counts charging Clarence O. Flannagan with the violation of Revised Maximum Price Regulation No. 169, Revised Maximum Price Regulation No. 239 and Revised Maximum Price Regulation No. 148, issued pursuant to the Emergency Price Control Act of 1942. (The maximum penalty on each Count consists of one (1) year imprisonment and/or a fine of Five Thousand Dollars (\$5,000) or both, with no minimum penalty provided).

Clarence O. Flannagan
325 Santa Ana Avenue
Newport Heights, California [3]

In the District Court of the United States, Southern
District of California, Central Division

No. 16107-Crim.

UNITED STATES OF AMERICA

Plaintiff,

vs.

CLARENCE O. FLANNAGAN,

Defendant.

INFORMATION

Comes now Charles H. Carr, United States Attorney in and for the Southern District of California, Central Division, who for the United States and in its behalf, prosecutes in his own proper

person, and with leave of Court first had and obtained, gives the Court here to understand and be informed as follows to-wit: [4]

COUNT ONE

That on or about June 25, 1943, in the City of Fullerton, County of Orange, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Clarence O. Flannagan, doing business as West Coast Meat Company, hereinafter called "the defendant", did make a "Peddler-Truck Sale" of certain meat products to Jack Casparie; that said defendant did knowingly, wilfully and unlawfully give a false invoice covering said Peddler-Truck Sale of said meat products, in that said defendant did give an invoice covering said Peddler-Truck Sale on West Coast Meat Company invoice No. 7808, dated June 25, 1943, showing the total price charged and received for the meat products listed on said invoice No. 7808 to be \$101.42, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received for the meat items shown on invoice No. 7808 was \$127.57, in violation of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, and in violation of Revised Maximum Price Regulation No. 148 (7 Fed. Reg. 8609) as amended, issued by Leon Henderson as Adminis-

trator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [5]

COUNT TWO

That on or about June 4, 1943, in the City of Fullerton, County of Orange, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Clarence O. Flannagan, doing business as West Coast Meat Company, hereinafter called "the defendant", did make a "Peddler-Truck Sale" of certain meat products to Jack Casparie; that said defendant did knowingly, wilfully and unlawfully give a false invoice covering said Peddler-Truck Sale of said meat products, in that said defendant did give an invoice covering said Peddler-Truck Sale on West Coast Meat Company invoice No. 7678, dated June 4, 1943, showing the total price charged and received for the meat products listed on said invoice No. 7678 to be \$288.27, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received for the meat items shown on invoice No. 7678 was \$385.47, in violation of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pur-

suant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [6]

COUNT THREE

That on or about June 8, 1943, in the City of Fullerton, County of Orange, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Clarence O. Flannagan, doing business as West Coast Meat Company, hereinafter called "the defendant", did make a "Peddler-Truck Sale" of certain meat products to Jack Casperie; that said defendant did knowingly, wilfully and unlawfully give a false invoice covering said Peddler-Truck Sale of said meat products, in that said defendant did give an invoice covering said Peddler-Truck Sale on West Coast Meat Company invoice No. 7702, dated June 8, 1943, showing the total price charged and received for the meat products listed on said invoice No. 7702 to be \$178.63, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received for the meat items shown on invoice No. 7702 was \$244.03, in violation of Revised Maximum Price Regulation No. 169, (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control

Act of 1942, and in violation of Revised Maximum Price Regulation No. 239 (7 Fed. Reg. 10688) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [7]

COUNT FOUR

That on or about June 11, 1943, in the City of Fullerton, County of Orange, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Clarence O. Flannagan, doing business as West Coast Meat Company, hereinafter called "the defendant", did make a "Peddler-Truck Sale" of certain meat products to Jack Casperie; that said defendant did knowingly, wilfully and unlawfully give a false invoice covering said Peddler-Truck Sale of said meat products, in that said defendant did give an invoice covering said Peddler-Truck Sale on West Coast Meat Company invoice No. 7731, dated June 11, 1943, showing the total price charged and received for the meat products listed on said invoice No. 7731 to be \$448.22, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received for the meat items shown on invoice No. 7731 was \$606.22, in violation of Revised Maximum Price

Regulation No. 169 (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, and in violation of Revised Maximum Price Regulation No. 148 (7 Fed. Reg. 8609) as amended, issued by Leon Henderson as Administrator of the Office of price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [8]

COUNT FIVE

That on or about June 15, 1943, in the City of Fullerton, County of Orange, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Clarence O. Flannagan, doing business as West Coast Meat Company, hereinafter called "the defendant", did make a "Peddler-Truck Sale of certain meat products to Jack Casperie; that said defendant did knowingly, wilfully and unlawfully give a false invoice covering said Peddler-Truck Sale of said Meat Products, in that said defendant did give an invoice covering said Peddler-Truck Sale on West Coast Meat Company invoice No. 7752, dated June 15, 1943, showing the total price charged and received for the meat products listed on said invoice No. 7752 to be \$54.94, whereas in

truth and in fact, as the defendant then and there well knew, the total price charged and received for the meat items shown on invoice No. 7752 was \$69.19, in violation of Revised Maximum Price Regulation No. 148 (7 Fed. Reg. 8609) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [9]

COUNT SIX

That on or about July 1, 1943, in the City of Fullerton, County of Orange, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Clarence O. Flannagan, doing business as West Coast Meat Company, hereinafter called "the defendant", did make a "Peddler-Truck Sale" of certain meat products to Jack Casparie; that said defendant did knowingly, wilfully and unlawfully give a false invoice covering said Peddler-Truck Sale of said meat products in that said defendant did give an invoice covering said Peddler-Truck Sale on West Coast Meat Company invoice No. 7832, dated July 1, 1943, showing the total price charged and received for the meat products listed on said invoice No. 7832 to be \$450.51, whereas in truth and in fact, as the defendant then and there

well knew, the total price charged and received for the meat items shown on invoice No. 7832 was \$609.41, in violation of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, and in violation of Revised Maximum Price Regulation No. 239 (7 Fed. Reg. 10688) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, and in violation of Revised Maximum Price Regulation No. 148 (7 Fed. Reg. 8609) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [10]

COUNT SEVEN

That on or about the 2nd day of July, 1943 in the City of Fullerton, County of Orange, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Clarence O. Flannagan, doing business as West Coast Meat Company, hereinafter called "the defendant", did make a "Peddler-Truck Sale" of certain meat products to Jack Cas-

parie; that said defendant did knowingly, wilfully and unlawfully give a false invoice covering said Peddler-Truck Sale of said meat products, in that said defendant did give an invoice covering said Peddler-Truck Sale on West Coast Meat Company invoice No. 7840, dated July 2, 1943, showing the total price charged and received for the meat products listed on said invoice No. 7840, to be \$367.86, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received for the meat items shown on invoice No. 7840 was \$537.18, in violation of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, and in violation of Revised Maximum Price Regulation No. 148 (7 Fed. Reg. 8609) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [11]

COUNT EIGHT

That on or about June 3, 1943, in the City of Anaheim, County of Orange, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this

Court, Clarence O. Flannagan, doing business as West Coast Meat Company, hereinafter called "the defendant", did knowingly, wilfully and unlawfully offer for sale, sell and deliver to R. H. Richards, doing business as Rich's Market, one beef carcass, U. S. Grade A, weighing 640 pounds, for the sum of \$225.83, which said beef carcass U. S. Grade A, weighing 640 pounds, had a maximum price of \$155.20 under the provisions of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [12]

COUNT NINE

That on or about June 7, 1943, in the City of Anaheim, County of Orange, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Clarence O. Flannagan, doing business as West Coast Meat Company, hereinafter called "the defendant", did make a "Peddler-Truck Sale" of certain meat products to R. H. Richards, doing business as Rich's Market; that said defendant did knowingly, wilfully and unlawfully give a false invoice covering said Peddler-Truck Sale of said meat products, in that said defendant did give an

invoice covering said Peddler-Truck Sale on West Coast Meat Company invoice No. 7693, dated June 7, 1943, showing the total price charged and received for the meat products listed on said invoice No. 7693 to be \$192.53, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received for the meat items shown on Invoice No. 7693 was \$281.15, in violation of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, and in violation of Revised Maximum Price Regulation No. 148 (7 Fed. Reg. 8609) as amended, issued by Leon Henderson, as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [13]

COUNT TEN

That on or about June 25, 1943, in the City of Anaheim, County of Orange, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Clarence O. Flannagan, doing business as West Coast Meat Company, hereinafter called "the defendant", did knowingly, wilfully and unlawfully

offer for sale, sell and deliver to James R. Kilduff, doing business as Kilduff's Market, at 225 East Center Street, Anaheim, California, one side of U. S. Grade A beef, weighing 564 pounds, for the sum of $29\frac{1}{4}$ c per pound, which said side of U. S. Grade A beef, weighing 564 pounds, had a maximum price of not more than $22\frac{1}{4}$ c per pound under the provisions of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [14]

COUNT ELEVEN

That on or about June 28, 1943, in the City of Anaheim, County of Orange, State of California in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Clarence O. Flannagan, doing business as West Coast Meat Company, hereinafter called "the defendant", did knowingly, wilfully and unlawfully offer for sale, sell and deliver to James R. Kilduff, doing business as Kilduff's Market, at 225 East Center Street, Anaheim, California, one U. S. Grade B beef carcass, weighing 425 pounds, for the sum of $27\frac{1}{4}$ c per pound, which said U. S. Grade B beef carcass had a maximum price of not more than

20 $\frac{1}{4}$ c per pound under the provisions of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [15]

COUNT TWELVE

That on or about July 1, 1943, in the City of Anaheim, County of Orange, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Clarence O. Flannagan, doing business as West Coast Meat Company, hereinafter called "the defendant", did make a "Peddler-Truck Sale" of certain meat products to L. M. Pickel, doing business as Pickel's; that said defendant did knowingly, wilfully and unlawfully give a false invoice covering said Peddler-Truck Sale of said meat products, in that said defendant did give an invoice covering said Peddler-Truck Sale on West Coast Meat Company invoice No. 7834, dated July 1, 1943, showing the total price charged and received for the meat products listed on said invoice No. 7834 to be \$38.93, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received for the meat items shown on invoice No. 7834 was \$52.77, in violation of Revised Maximum

Price Regulation No. 169 (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, and in violation of Revised Maximum Price Regulation No. 239 (7 Fed. Reg. 10688) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Wherefore, said United States Attorney prays that process of this Court be issued against Clarence O. Flannagan and that he be dealt with according to law.

CHARLES H. CARR

United States Attorney

By CHARLES H. VEALE

Assistant United States

Attorney [16]

VERIFICATION

State of California

County of Los Angeles

United States of America—ss.

Stanley Gorman, being first duly sworn, upon oath deposes and says:

That he is an employee of the United States Government, to-wit, an Investigator for the Office

of Price Administration, an agency of the United States Government; that in the course of his duty as an Investigator for the Office of Price Administration he made an investigation of the matters set forth and mentioned in the foregoing Information against Clarence O. Flannagan; that he has read the above and foregoing Information and knows the contents thereof and that the matters set forth therein are true of his own knowledge.

STANLEY GORMAN

Subscribed and sworn to before me this 13th day of July, 1943.

[Seal] ESTHER BLAISDELL

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires May 14, 1946.

[Endorsed]: Filed July 15, 1943. [17]

[Title of District Court and Cause.]

NOTICE OF MOTION TO QUASH AND
SET ASIDE INFORMATION

To the United States of America and Charles H. Carr, its attorney:

You and each of you will please take notice that the defendant herein, Clarence O. Flannagan, by and through his attorney, William Katz, will move the above entitled Court in Courtroom 1 thereof, Federal Building, Los Angeles, on Wednesday,

July 26, at the hour of 10:00 A.M. thereof or as soon thereafter as counsel may be heard, to quash and set aside the information and each count thereof filed by plaintiff herein.

Said motion will be made upon the grounds that said information and each count thereof fails to state facts sufficient to constitute a criminal offense, that the laws, rules and regulations upon which said information purports to be based are arbitrary, discriminatory, unreasonable, invalid, unconstitutional and void and that the United States Attorney in and for the Southern District of California, Central Division, has not been authorized [18] or directed to institute the above entitled proceedings by the Secretary of Agriculture, and that the Secretary of Agriculture did not, prior to the commencement of the above proceeding or at any other time, approve the institution of the above entitled action.

Said motion will be based upon this notice of motion, the information filed herein and the law governing.

Dated this 20 day of July, 1943.

WILLIAM KATZ

Attorney for Defendant.

[Endorsed]: Filed July 21, 1943. [19]

[Title of District Court and Cause.]

DEMURRER TO INFORMATION

Comes now Clarence O. Flannagan, defendant herein, by and through his attorney, William Katz, and demurs to the information filed by plaintiff herein upon the following grounds:

I.

That said information fails to state facts sufficient to constitute a criminal offense.

II.

That Count One of said information fails to state facts sufficient to constitute a criminal offense.

III.

That Count Two of said information fails to state facts sufficient to constitute a criminal offense.

IV.

That Count Three of said information fails to state facts sufficient to constitute a criminal offense. [20]

V.

That Count Four of said information fails to state facts sufficient to constitute a criminal offense.

VI.

That Count Five of said information fails to state facts sufficient to constitute a criminal offense.

VII.

That Count Six of said information fails to state facts sufficient to constitute a criminal offense.

VIII.

That Count Seven of said information fails to state facts sufficient to constitute a criminal offense.

IX.

That Count Eight of said information fails to state facts sufficient to constitute a criminal offense.

X.

That Count Nine of said information fails to state facts sufficient to constitute a criminal offense.

XI.

That Count Ten of said information fails to state facts sufficient to constitute a criminal offense.

XII.

That Count Eleven of said information fails to state facts sufficient to constitute a criminal offense.

XIII.

That Count Twelve of said information fails to state facts sufficient to constitute a criminal offense.

Wherefore, defendant prays that this demurrer be sustained and the above entitled proceeding dismissed.

WILLIAM KATZ

Attorney for Defendant [21]

Received copy of the within Demurrer this 21st day of July, 1943.

CHARLES H. CARR,

HKM

U. S. Atty.

Attorney for Plaintiff

[Endorsed]: Filed July 21, 1943. [22]

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 30th day of September in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable C. E. Beaumont, District Judge.

[Title of Cause.]

No. 16,107-Crim.

ORDER DENYING MOTION TO QUASH AND SET ASIDE INFORMATION

Motion of the defendant to quash and set aside information, and demurrer of defendant, having heretofore been heard by the Court, and counsel having argued the same and submitted written briefs, and the Court having duly considered the same and being fully advised as to the facts and the law, now denies motion to quash and set aside information, and sustains demurrer, granting leave to the Government to file amended information within ten days. [23]

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 11th day of October in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

No. 16107-Crim.

ORDER THAT AMENDED
INFORMATION BE FILED

On motion of Ray H. Kinnison, Esq., Assistant U. S. Attorney, who presents an Amended Information to the Court in this cause, it is ordered that said Amended Information be filed. [24]

This Information contains twelve (12) Counts charging Clarence O. Flannagan with the violation of Revised Maximum Price Regulation No. 169, Revised Maximum Price Regulation No. 239 and Revised Maximum Price Regulation No. 148, issued pursuant to the Emergency Price Control Act of 1942. (The maximum penalty on each Count consists of one (1) year imprisonment and/or a fine of Five Thousand Dollars (\$5,000.00) or both, with no minimum penalty provided).

Clarence O. Flannagan
325 Santa Ana Avenue
Newport Heights, California [25]

[Title of District Court and Cause.]

AMENDED INFORMATION

Comes now Charles H. Carr, United States Attorney in and for the Southern District of California, Central Division, who for the United States and in its behalf, prosecutes in his own proper person, and with leave of Court first had and obtained, gives the Court here to understand and be informed as follows, to-wit: [26]

COUNT ONE

That on or about the 25th day of June, 1943, in the City of Fullerton, County of Orange, State of California, in the District aforesaid and in the Central Division thereof and within the jurisdiction of this Court, the defendant, Clarence O. Flanagan, sold and delivered to Jack Casparie certain beef and pork cuts; that in connection with and as a part of said sale the defendant did knowingly, wilfully and unlawfully and with intent to evade the maximum prices permitted for said cuts, as established by Revised Maximum Price Regulation 169 (7 Fed. Reg. 10381), as amended, and Revised Maximum Price Regulation 148 (7 Fed. Reg. 8609), as amended, issued pursuant to the Emergency Price Control Act of 1942, furnish to Jack Casparie an invoice stating the total price charged for said beef and pork cuts to be \$101.42, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received by the defendant from Jack Casparie for

said beef and pork cuts was \$127.57, which total price of \$127.57 was in excess of the maximum price permitted for said cuts by said Revised Maximum Price Regulation 169, as amended, and Revised Maximum Price Regulation 148, as amended; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [27]

COUNT TWO

That on or about the 4th day of June, 1943, in the City of Fullerton, County of Orange, State of California, in the District aforesaid and in the Central Division thereof and within the jurisdiction of this Court, the defendant, Clarence O. Flannagan, sold and delivered to Jack Casparie certain beef and pork cuts; that in connection with and as a part of said sale the defendant did knowingly, wilfully and unlawfully and with intent to evade the maximum prices permitted for said cuts, as established by Revised Maximum Price Regulation 169 (7 Fed. Reg. 10381), as amended, and Revised Maximum Price Regulation 148 (7 Fed. Reg. 8609), as amended, issued pursuant to the Emergency Price Control Act of 1942, furnish to Jack Casparie an invoice stating the total price charged for said beef and pork cuts to be \$288.27, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received by the defendant from Jack Casparie for

said beef and pork cuts was \$385.47, which total price of \$385.47 was in excess of the maximum price permitted for said cuts by said Revised Maximum Price Regulation 169, as amended, and Revised Maximum Price Regulation 148, as amended; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [28]

COUNT THREE

That on or about the 8th day of June, 1943, in the City of Fullerton, County of Orange, State of California, in the District aforesaid and in the Central Division thereof and within the jurisdiction of this Court, the defendant, Clarence O. Flannagan, sold and delivered to Jack Casparie certain beef and lamb cuts; that in connection with and as a part of said sale the defendant did knowingly, wilfully and unlawfully and with intent to evade the maximum prices permitted for said cuts, as established by Revised Maximum Price Regulation 169 (7 Fed. Reg. 10381), as amended, and Revised Maximum Price Regulation 239 (7 Fed. Reg. 10688), as amended, issued pursuant to the Emergency Price Control Act of 1942, furnish to Jack Casparie an invoice stating the total price charged for said beef and lamb cuts to be \$178.63, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received by the defendant from Jack Casparie for

said beef and lamb cuts was \$244.03, which total price of \$244.03 was in excess of the maximum price permitted for said cuts by said Revised Maximum Price Regulation 169, as amended, and Revised Maximum Price Regulation 239, as amended; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [29]

COUNT FOUR

That on or about the 11th day of June, 1943, in the City of Fullerton, County of Orange, State of California, in the District aforesaid and in the Central Division thereof and within the jurisdiction of this Court, the defendant, Clarence O. Flannagan, sold and delivered to Jack Casparie certain beef and pork cuts; that in connection with and as a part of said sale the defendant did knowingly, wilfully and unlawfully and with intent to evade the maximum prices permitted for said cuts, as established by Revised Maximum Price Regulation 169 (7 Fed. Reg. 10381), as amended, and Revised Maximum Price Regulation 148 (7 Fed. Reg. 8609), as amended, issued pursuant to the Emergency Price Control Act of 1942, furnish to Jack Casparie an invoice stating the total price charged for said beef and pork cuts to be \$448.22, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received by the defendant from Jack Casparie for said beef and

pork cuts was \$606.22, which total price of \$606.22 was in excess of the maximum price permitted for said cuts by said Revised Maximum Price Regulation 169, as amended, and Revised Maximum Price Regulation 148, as amended; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [30]

COUNT FIVE

That on or about the 15th day of June, 1943, in the City of Fullerton, County of Orange, State of California, in the district aforesaid and in the Central Division thereof and within the jurisdiction of this Court, the defendant, Clarence O. Flannagan, sold and delivered to Jack Casparie certain beef and pork cuts; that in connection with and as a part of said sale the defendant did knowingly, wilfully and unlawfully and with intent to evade the maximum prices permitted for said cuts, as established by Revised Maximum Price Regulation 169 (7 Fed. Reg. 10381), as amended, and Revised Maximum Price Regulation 148 (7 Fed. Reg. 8609), as amended, issued pursuant to the Emergency Price Control Act of 1942, furnish to Jack Casparie an invoice stating the total price charged for said beef and pork cuts to be \$54.94, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received by the defendant from Jack Casparie for said beef and pork cuts was \$69.19, which total price of \$69.19 was in excess

of the maximum price permitted for said cuts by said Revised Maximum Price Regulation 169, as amended, and Revised Maximum Price Regulation 148, as amended; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [31]

COUNT SIX

That on or about the 1st day of July, 1943, in the City of Fullerton, County of Orange, State of California, in the District aforesaid and in the Central Division thereof and within the jurisdiction of this Court, the defendant, Clarence O. Flannagan, sold and delivered to Jack Casparie certain beef, pork and lamb cuts; that in connection with and as a part of said sale the defendant did knowingly, wilfully and unlawfully and with intent to evade the maximum prices permitted for said cuts, as established by Revised Maximum Price Regulation 169 (7 Fed. Reg. 10381), as amended, Revised Maximum Price Regulation 148 (7 Fed. Reg. 8609) as amended, and Revised Maximum Price Regulation 239 (7 Fed. Reg. 10688), as amended, issued pursuant to the Emergency Price Control Act of 1942, furnish to Jack Casparie an invoice stating the total price charged for said beef, pork and lamb cuts to be \$450.51, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received by the defendant from Jack Casparie

for said beef, pork and lamb cuts was \$609.41, which total price of \$609.41 was in excess of the maximum price permitted for said cuts by said Revised Maximum Price Regulation 169, as amended, Revised Maximum Price Regulation No. 148, as amended, and Revised Maximum Price Regulation 239, as amended; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [32]

COUNT SEVEN

That on or about the 2nd day of July, 1943, in the City of Fullerton, County of Orange, State of California, in the District aforesaid and in the Central Division thereof and within the jurisdiction of this Court, the defendant, Clarence O. Flannagan, sold and delivered to Jack Casparie certain beef, pork and lamb cuts; that in connection with and as a part of said sale the defendant did knowingly, wilfully and unlawfully and with intent to evade the maximum prices permitted for said cuts, as established by Revised Maximum Price Regulation 169 (7 Fed. Reg. 10381), as amended, Revised Maximum Price Regulation 148 (7 Fed. Reg. 8609), as amended, and Revised Maximum Price Regulation 239 (7 Fed. Reg. 10688), as amended, issued pursuant to the Emergency Price Control Act of 1942, furnish to Jack Casparie an invoice stating the total price charged for said beef, pork and lamb cuts to be \$367.86, whereas in truth and in fact,

as the defendant then and there well knew, the total price charged and received by the defendant from Jack Casparie for said beef, pork and lamb cuts was \$537.18, which total price of \$537.18 was in excess of the maximum price permitted for said cuts by said Revised Maximum Price regulation 169, as amended, Revised Maximum Price Regulation No. 148, as amended, and Revised Maximum Price Regulation 239, as amended; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [33]

COUNT EIGHT

That on or about the 3rd day of June, 1943, in the City of Anaheim, County of Orange, State of California, in the District aforesaid and in the Central Division thereof and within the jurisdiction of this Court, the defendant, Clarence O. Flannagan, violated the provisions of Section 1364.401 of Revised Maximum Price Regulation 169 (7 Fed. Reg. 10381), as amended, issued pursuant to Section 2 of the Emergency Price Control Act of 1942, in that he did knowingly, wilfully and unlawfully offer for sale, sell and deliver to R. H. Richards, doing business as Rich's Market, Anaheim, California, one beef carcass, U. S. Grade A, weighing 640 pounds, for the sum of \$225.83; that the maximum price permitted under said Revised Maximum Price Regulation 169, as amended, for said beef carcass, U. S. Grade A, weighing 640 pounds was

\$155.20; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [34]

COUNT NINE

That on or about the 7th day of June, 1943, in the City of Anaheim, County of Orange, State of California, in the District aforesaid and in the Central Division thereof and within the jurisdiction of this Court, the defendant, Clarence O. Flannagan, sold and delivered to R. H. Richards, doing business as Rich's Market, Anaheim, California, certain beef and pork cuts; that in connection with and as a part of said sale the defendant did knowingly, wilfully and unlawfully and with intent to evade the maximum prices permitted for said cuts, as established by Revised Maximum Price Regulation 169 (7 Fed. Reg. 10381), as amended, and Revised Maximum Price Regulation 148 (7 Fed. Reg. 8609), as amended, issued pursuant to the Emergency Price Control Act of 1942, furnish to R. H. Richards, doing business as Rich's Market, Anaheim, California, an invoice stating the total price charged for said beef and pork cuts to be \$192.53, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received by the defendant from R. H. Richards, doing business as Rich's Market, for said beef and pork cuts was \$281.15, which total price of \$281.15 was in excess of the maximum price permitted for

said cuts by said Revised Maximum Price Regulation 169, as amended, and Revised Maximum Price Regulation 148, as amended; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [35]

COUNT TEN

That on or about the 25th day of June, 1943, in the City of Anaheim, County of Orange, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Clarence O. Flannagan violated the provisions of Section 1364.401 of Revised Maximum Price Regulation 169 (7 Fed. Reg. 10381), as amended, issued pursuant to Section 2 of the Emergency Price Control Act of 1942, in that he did knowingly, wilfully and unlawfully offer for sale, sell and deliver to James R. Kilduff, doing business as Kilduff's Market, Anaheim, California, one side of beef, U. S. Grade A, weighing 564 pounds, for the price of 29¼¢ per pound; that the maximum price permitted under said Revised Maximum Price Regulation 169, as amended, for said side of beef, U. S. Grade A, weighing 564 pounds, was 22¼¢ per pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [36]

COUNT ELEVEN

That on or about the 28th day of June, 1943, in the City of Anaheim, County of Orange, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Clarence O. Flannagan violated the provisions of Section 1364.401 of Revised Maximum Price Regulation 169 (7 Fed. Reg. 10381), as amended, issued pursuant to Section 2 of the Emergency Price Control Act of 1942, in that he did knowingly, wilfully and unlawfully offer for sale, sell and deliver to James R. Kilduff, doing business as Kilduff's Market, Anaheim, California, one U. S. Grade B beef carcass, weighing 425 pounds, for the price of 27¼¢ per pound; that the maximum price permitted under said Revised Maximum Price Regulation 169, as amended, for said U. S. Grade B beef carcass, weighing 425 pounds, was 20¼¢ per pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [37]

COUNT TWELVE

That on or about the 1st day of July, 1943, in the City of Anaheim, County of Orange, State of California, in the District aforesaid and in the Central Division thereof and within the jurisdiction of this Court, the defendant, Clarence O. Flannagan, sold and delivered to L. M. Pickel, doing business as

Pickel's, Anaheim, California, certain beef and lamb cuts; that in connection with and as a part of said sale the defendant did knowingly, wilfully and unlawfully and with intent to evade the maximum prices permitted for said cuts, as established by Revised Maximum Price Regulation 169 (7 Fed. Reg. 10381), as amended, and Revised Maximum Price Regulation 239 (7 Fed. Reg. 10688), as amended, issued pursuant to the Emergency Price Control Act of 1942, furnished to L. M. Pickel, doing business as Pickel's, an invoice stating the total price charged for said beef and lamb cuts to be \$38.93, whereas in truth and in fact, as the defendant then and there well knew, the total price charged and received by the defendant from L. M. Pickel, doing business as Pickel's, for said beef and lamb cuts was \$52.77, which total price of \$52.77 was in excess of the maximum price permitted for said cuts by said Revised Maximum Price Regulation 169, as amended, and Revised Maximum Price Regulation 239, as amended; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942).

Wherefore, said United States Attorney prays that process of this Court be issued against Clarence

O. Flannagan and that he be dealt with according to law.

CHARLES H. CARR

United States Attorney

By CHARLES H. VEALE

Assistant United States At-
torney [38]

VERIFICATION

State of California

County of Los Angeles

United States of America—ss.

Stanley Gorman, being first duly sworn, upon oath deposes and says:

That he is an employee of the United States Government, to-wit, an Investigator for the Office of Price Administration, an agency of the United States Government; that in the course of his duty as Investigator for the Office of Price Administration he made an investigation of the matters set forth and mentioned in the foregoing Information against Clarence O. Flannagan; that he has read the above and foregoing Information and knows the contents thereof and that the matters set forth therein are true of his own knowledge.

STANLEY GORMAN

Subscribed and sworn to this 9 day of October, 1943, before me, Edmund L. Smith, Clerk, United States District Court.

By IRWIN HAMES

[Endorsed]: Filed Oct. 11, 1943. [39]

[Title of District Court and Cause.]

NOTICE OF MOTION TO QUASH AND SET
ASIDE AMENDED INFORMATION

To the United States of America and Charles H.
Carr, Its Attorney:

You and Each of You Will Please Take Notice that the defendant herein, Clarence O. Flannagan, by and through his attorney, William Katz, will move the above entitled Court in Courtroom 6 thereof, Federal Building, Los Angeles, on Monday, October 18, 1943, at the hour of 10:00 A.M. thereof or as soon thereafter as counsel may be heard, to quash and set aside the amended information and each count thereof filed by plaintiff herein.

Said motion will be made upon the grounds that said amended information and each count thereof fails to state facts sufficient to constitute a criminal offense and that the laws, rules and regulations upon which said information purports to be based are arbitrary, discriminatory, unreasonable, invalid, unconstitutional and void. [40]

Said motion will be based upon this notice of motion, the amended information filed herein and the law governing.

Dated this 15th day of October, 1943.

WILLIAM KATZ

Attorney for Defendant.

[Endorsed]: Filed Oct. 16, 1943. [41]

[Title of District Court and Cause.]

DEMURRER TO AMENDED INFORMATION

Comes now Clarence O. Flannagan, defendant herein, by and through his attorney, William Katz, and demurs to the amended information filed by plaintiff herein upon the following grounds:

I.

That said information fails to state facts sufficient to constitute a criminal offense.

II.

That Count One of said information fails to state facts sufficient to constitute a criminal offense.

III.

That Count Two of said information fails to state facts sufficient to constitute a criminal offense.

IV.

That Count Three of said information fails to state facts sufficient to constitute a criminal offense.

[42]

V.

That Count Four of said information fails to state facts sufficient to constitute a criminal offense.

VI.

That Count Five of said information fails to state facts sufficient to constitute a criminal offense.

VII.

That Count Six of said information fails to state facts sufficient to constitute a criminal offense.

VIII.

That Count Seven of said information fails to state facts sufficient to constitute a criminal offense.

IX.

That Count Eight of said information fails to state facts sufficient to constitute a criminal offense.

X.

That Count Nine of said information fails to state facts sufficient to constitute a criminal offense.

XI.

That Count Ten of said information fails to state facts sufficient to constitute a criminal offense.

XII.

That Count Eleven of said information fails to state facts sufficient to constitute a criminal offense.

XIII.

That Count Twelve of said information fails to state facts sufficient to constitute a criminal offense.

XIV.

That Count One of the amended information is uncertain in that it cannot be determined therefrom:

(a) What crime, if any, defendant is alleged to have committed; [43]

(b) What grade of beef defendant is alleged to have sold and whether such beef was a "beef carcass" or a beef cut or beef cuts, and if a beef cut or beef cuts, the kind or type of cut or cuts;

(c) What the maximum price is, was or is claimed to be or have been for the beef alleged to have been sold by defendant;

(d) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer" or otherwise;

(e) Whether the sale alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(f) What grade, type or kind *or* pork cuts defendant is alleged to have sold;

(g) What the maximum price is, was or is claimed to be or have been for the pork cuts alleged to have been sold by defendant;

(h) Whether the sale of the pork cuts alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "certified hog processor", "hotel supply house", "packer" or otherwise;

(i) Whether the sale of the pork cuts alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(j) In what respect, if any, the purported crime attempted to be alleged in said count One differs from the type or kind of purported crime attempted to be alleged in Counts Eight, Ten and Eleven of said amended information.

XV.

That Count One of the amended information is

indefinite [44] in each and all of the respects in which it is set forth to be uncertain.

XVI.

That Count One of said amended information is ambiguous in each and all of the respects in which it is set forth to be uncertain and indefinite.

XVII.

That Count Two of the amended information is uncertain in that it cannot be determined therefrom:

(a) What crime, if any, defendant is alleged to have committed;

(b) What grade of beef defendant is alleged to have sold and whether such beef was a "beef carcass" or a beef cut or beef cuts, and if a beef cut or beef cuts, the kind or type of cut or cuts;

(c) What the maximum price is, was or is claimed to be or have been for the beef alleged to have been sold by defendant;

(d) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer" or otherwise;

(e) Whether the sale alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(f) What grade, type or kind of pork cuts defendant is alleged to have sold;

(g) What the maximum price is, was or is

claimed to be or have been for the pork cuts alleged to have been sold by defendant;

(h) Whether the sale of the pork cuts alleged to have been sold by defendant was made by defendant as a “wholesaler”, “peddler truck sale”, “certified hog processor”, “hotel supply house”, [45] “packer” or otherwise;

(i) Whether the sale of the pork cuts alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(j) In what respect, if any, the purported crime attempted to be alleged in said Count Two differs from the type or kind of purported crime attempted to be alleged in Counts Eight, Ten and Eleven of said amended information.

XVIII.

That Count Two of the amended information is indefinite in each and all of the respects in which it is set forth to be uncertain.

XIX.

That Count Two of said amended information is ambiguous in each and all of the respects in which it is set forth to be uncertain and indefinite.

XX.

That Count Three of the amended information is uncertain in that it can not be determined therefrom:

(a) What crime, if any, defendant is alleged to have committed;

(b) What grade of beef defendant is alleged to have sold and whether such beef was a "beef carcass" or a beef cut or beef cuts, and if a beef cut or beef cuts, the kind or type of cut or cuts;

(c) What the maximum price is, was or is claimed to be or have been for the beef alleged to have been sold by defendant;

(d) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer" or otherwise; [46]

(e) Whether the sale alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(f) What grade, type or kind of lamb cuts defendant is alleged to have sold;

(g) What the maximum price is, was or is claimed to be or have been for the lamb cuts alleged to have been sold by defendant;

(h) Whether the lamb cuts alleged to have been sold by defendant were sold by him as a "wholesaler", "peddler truck sale", "hotel supply house", "packer" or otherwise;

(i) Whether the lamb cuts alleged to have been sold by defendant were sold to a wholesaler, retailer, purveyor of meals or otherwise;

(j) In what respect, if any, the purported crime attempted to be alleged in said Count Three differs from the type or kind of purported crime attempted to be alleged in Counts Eight, Ten and Eleven of said amended information.

XXI.

That Count Three of the amended information is indefinite in each and all of the respects in which it is set forth to be uncertain.

XXII.

That Count Three of said amended information is ambiguous in each and all of the respects in which it is set forth to be uncertain and indefinite.

XXIII.

That Count Four of the amended information is uncertain in that it cannot be determined therefrom:

(a) What crime, if any, defendant is alleged to have committed;

(b) What grade of beef defendant is alleged to have [47] sold and whether such beef was a "beef carcass" or a beef cut or beef cuts, and if a beef cut or beef cuts, the kind or type of cut or cuts;

(c) What the maximum price is, was or is claimed to be or have been for the beef alleged to have been sold by defendant;

(d) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer" or otherwise;

(e) Whether the sale alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(f) What grade, type or kind of pork cuts defendant is alleged to have sold;

(g) What the maximum price is, was or is claimed to be or have been for the pork cuts alleged to have been sold by defendant;

(h) Whether the sale of the pork cuts alleged to have been sold by defendant was made by defendant as a “wholesaler”, “peddler truck sale”, “certified hog processor”, “hotel supply house”, “packer” or otherwise;

(i) Whether the sale of the pork cuts alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(j) In what respect, if any, the purported crime attempted to be alleged in said Count Four differs from the type or kind of purported crime attempted to be alleged in Counts Eight, Ten and Eleven of said amended information.

XXIV.

That Count Four of the amended information is indefinite in each and all of the respects in which it is set forth to be uncertain. [48]

XXV.

That Count Four of said amended information is ambiguous in each and all of the respects in which it is set forth to be uncertain and indefinite.

XXVI.

That Count Five of the amended information is uncertain in that it cannot be determined therefrom:

(a) What crime, if any, defendant is alleged to have committed;

(b) What grade of beef defendant is alleged to have sold and whether such beef was a "beef carcass" or a beef cut or beef cuts, and if a beef cut or beef cuts, the kind or type of cut or cuts.

(c) What the maximum price is, was or is claimed to be or have been for the beef alleged to have been sold by defendant;

(d) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", slaughterer", "packer" or otherwise;

(e) Whether the sale alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(f) What grade, type or kind of pork cuts defendant is alleged to have sold;

(g) What the maximum price is, was or is claimed to be or have been for the pork cuts alleged to have been sold by defendant;

(h) Whether the sale of the pork cuts alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "certified hog processor", "hotel supply house", "packer" or otherwise; [49]

(i) Whether the sale of the pork cuts alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(j) In what respect, if any, the purported crime attempted to be alleged in said Count Five differs from the type or kind of purported crime attempted

to be alleged in Counts Eight, Ten and Eleven of said amended information.

XXVII.

That Count Five of the amended information is indefinite in each and all of the respects in which it is set forth to be uncertain.

XXVIII.

That Count Five of the amended information is ambiguous in each and all of the respects in which it is set forth to be uncertain and indefinite.

XXIX.

That Count Six of the amended information is uncertain in that it cannot be determined therefrom:

(a) What crime, if any, defendant is alleged to have committed;

(b) What grade of beef defendant is alleged to have sold and whether such beef was a "beef carcass" or a beef cut or beef cuts, and if a beef cut or beef cuts, the kind or type of cut or cuts;

(c) What the maximum price is, was or is claimed to be or have been for the beef alleged to have been sold by defendant;

(d) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer" or otherwise;

(e) Whether the sale alleged to have been made

by de- [50] fendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(f) What grade, type or kind of pork cuts defendant is alleged to have sold;

(g) What the maximum price is, was or is claimed to be or have been for the pork cuts alleged to have been sold by defendant;

(h) Whether the sale of the pork cuts alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "certified hog processor", "hotel supply house", "packer" or otherwise;

(i) Whether the sale of the pork cuts alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(j) What grade, type or kind of lamb cuts defendant is alleged to have sold;

(k) What the maximum price is, was or is claimed to be or have been for the lamb cuts alleged to have been sold by defendant;

(l) Whether the lamb cuts alleged to have been sold by defendant were sold by him as a "wholesaler", "peddler truck sale", "hotel supply house", "packer" or otherwise;

(m) Whether the lamb cuts alleged to have been sold by defendant were sold by defendant to a wholesaler, retailer, purveyor of meals or otherwise;

(n) In what respect, if any, the purported crime attempted to be alleged in said Count Six

differs from the type or kind of purported crime attempted to be alleged in Counts Eight, Ten and Eleven of said amended information.

XXX.

That Count Six of the amended information is indefinite in each and all of the respects in which it is set forth to be un- [51] certain.

XXXI.

That Count Six of said amended information is ambiguous in each and all of the respects in which it is set forth to be uncertain and indefinite.

XXXII.

That Count Seven of the amended information is uncertain in that it cannot be determined therefrom:

(a) What crime, if any, defendant is alleged to have committed;

(b) What grade of beef defendant is alleged to have sold and whether such beef was a "beef carcass" or a beef cut or beef cuts, and if a beef cut or beef cuts, the kind or type of cut or cuts;

(c) What the maximum price is, was or is claimed to be or have been for the beef alleged to have been sold by defendant;

(d) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", "Slaughterer", "packer" or otherwise;

(e) Whether the sale alleged to have been made

by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(f) What grade, type or kind of pork cuts defendant is alleged to have sold;

(g) What the maximum price is, was or is claimed to be or have been for the pork cuts alleged to have been sold by defendant;

(h) Whether the sale of the pork cuts alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "certified hog processor", "hotel supply house", "packer" or otherwise; [52]

(i) Whether the sale of the pork cuts alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(j) What grade, type or kind of lamb cuts defendant is alleged to have sold;

(k) What the maximum price is, was or is claimed to be or have been for the lamb cuts alleged to have been sold by defendant;

(l) Whether the lamb cuts alleged to have been sold by defendant were sold by him as a "wholesaler", "peddler truck sale", "hotel supply house", "packer" or otherwise;

(m) Whether the lamb cuts alleged to have been sold by defendant were sold by defendant to a wholesaler, retailer, purveyor of meals or otherwise;

(n) In what respect, if any, the purported crime attempted to be alleged in said Count Seven differs from the type or kind of purported crime

attempted to be alleged in Counts Eight, Ten and Eleven of said amended information.

XXXIII.

That Count Seven of the amended information is indefinite in each and all of the respects in which it is heretofore set forth to be uncertain.

XXXIV.

That Count Seven of said amended information is ambiguous in each and all of the respects in which it is set forth to be uncertain and indefinite.

XXXV.

That Count Eight of the amended information is uncertain in that it cannot be determined therefrom:

(a) What crime, if any, defendant is alleged to have committed; [53]

(b) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer" or otherwise;

(c) Whether the sale alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(d) In what respects, if any, the purported crime attempted to be alleged in said Count Eight differs from the purported crimes attempted to be alleged in Counts One, Two, Three, Four, Five, Six, Seven, Nine and Twelve of said amended information.

XXXVI.

That Count Eight of the amended information is indefinite in each and all of the respects in which it is heretofore set forth to be uncertain.

XXXVII.

That Count Eight of the said amended information is ambiguous in each and all of the respects in which it is heretofore set forth to be uncertain and indefinite.

XXXVIII.

That Count Nine of the amended information is uncertain in that it cannot be determined therefrom:

(a) What crime, if any, defendant is alleged to have committed;

(b) What grade of beef defendant is alleged to have sold and whether such beef was a "beef carcass" or a beef cut or beef cuts, and if a beef cut or beef cuts, the kind or type of cut or cuts;

(c) What the maximum price is, was or is claimed to be or have been for the beef alleged to have been sold by defendant;

(d) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler [54] truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer" or otherwise;

(e) Whether the sale alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(f) What grade, type or kind of pork cuts defendant is alleged to have sold;

(g) What the maximum price is, was or is claimed to be or have been for the pork cuts alleged to have been sold by defendant;

(h) Whether the sale of the pork cuts alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "certified hog processor", "hotel supply house", "packer" or otherwise;

(i) Whether the sale of the pork cuts alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(j) In what respect, if any, the purported crime attempted to be alleged in said Count Nine differs from the type or kind of purported crime attempted to be alleged in Counts Eight, Ten and Eleven of said amended information.

XXXIX.

That Count Nine of the amended information is indefinite in each and all of the respects in which it is heretofore set forth to be uncertain.

XXXX.

That Count Nine of said amended information is ambiguous in each and all of the respects in which it is heretofore set forth to be uncertain and indefinite.

XXXXI.

That Count Ten of the amended information is uncertain in that it cannot be determined therefrom: [55]

(a) What crime, if any, defendant is alleged to have committed;

(b) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer" or otherwise;

(c) Whether the sale alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(d) In what respects, if any, the purported crime attempted to be alleged in said Count Ten differs from the purported crimes attempted to be alleged in Counts, One, Two, Three, Four, Five, Six, Seven, Nine and Twelve of said amended information.

XXXXII.

That Count Ten of the amended information is indefinite in each and all of the respects in which it is heretofore set forth to be uncertain.

XXXXIII.

That Count Ten of said amended information is ambiguous in each and all of the respects in which it is heretofore set forth to be uncertain and indefinite.

XXXXIV.

That Count Eleven of the amended information is uncertain in that it cannot be determined therefrom:

(a) What crime, if any, defendant is alleged to have committed;

(b) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer" or otherwise;

(c) Whether the sale alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or [56] otherwise;

(d) In what respects, if any, the purported crime attempted to be alleged in said Count Eleven differs from the purported crimes attempted to be alleged in Counts One, Two, Three, Four, Five, Six, Seven, Nine and Twelve of said amended information.

XXXXV.

That Count Eleven of the amended information is indefinite in each and all of the respects in which it is heretofore set forth to be uncertain.

XXXXVI.

That Count Eleven of the said amended information is ambiguous in each and all of the respects in which it is heretofore set forth to be uncertain and indefinite.

XXXXVII.

That Count Twelve of the amended information is uncertain in that it cannot be determined therefrom:

(a) What crime, if any, defendant is alleged to have committed;

(b) What grade of beef defendant is alleged to have sold and whether such beef was a "beef

carcass” or a beef cut or beef cuts, and if a beef cut or beef cuts, the kind or type of cut or cuts;

(c) What the maximum price is, was or is claimed to be or have been for the beef alleged to have been sold by defendant;

(d) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a “wholesaler”, “peddler truck sale”, “independent wholesaler”, “hotel supply house”, “slaughterer”, “packer” or otherwise;

(e) Whether the sale alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(f) What grade, type or kind of lamb cuts defendant [57] is alleged to have sold;

(g) What the maximum price is, was or is claimed to be or have been for the lamb cuts alleged to have been sold by defendant;

(h) Whether the lamb cuts alleged to have been sold by defendant were sold by him as a “wholesaler”, “peddler truck sale”, “hotel supply house”, “packer” or otherwise;

(i) Whether the lamb cuts alleged to have been sold by defendant were sold to a wholesaler, retailer, purveyor of meals or otherwise;

(j) In what respect, if any, the purported crime attempted to be alleged in said Count Twelve differs from the type or kind of purported crime attempted to be alleged in Counts Eight, Ten and Eleven of said amended information.

XXXXVIII.

That Count Twelve is indefinite in each and all

of the respects in which it is heretofore set forth to be uncertain.

XXXXIX.

That Count Twelve of the said amended information is ambiguous in each and all of the respects in which it is heretofore set forth to be uncertain and indefinite.

Wherefore, defendant prays that this demurrer be sustained and the above entitled proceeding dismissed.

WILLIAM KATZ

Attorney for Defendant.

[Endorsed]: Filed Oct. 16, 1943. [58]

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 18th day of October in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

No. 16,107-Crim.

ORDER DENYING MOTION TO QUASH
AND OVERRULE DEMURRER

This cause coming on for hearing on motion to quash and demurrer, and for arraignment and plea of the defendant Clarence O. Flannagan, to the

amended Information; Ray H. Kinnison, Esq., Assistant *U. S. appearing* for the Government; William Katz, Esq., appearing as counsel for the defendant; Virginia Pickering, Court Reporter, being present and reporting the proceedings; the defendant being present in Court on bond;

Attorney Katz makes a statement and argues the motion to quash and demurrer. The Court orders the motion to quash denied and demurrer overruled, and an exception is allowed to the defendant.

The defendant enters plea of not guilty to each of the 12 counts of the amended Information, and it is ordered that this cause be, and it hereby is set for trial for November 9, 1943, at 9:30 A. M. [59]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR
BILL OF PARTICULARS

To the United States of America, plaintiff herein,
and Charles H. Carr, its attorney:

You and each of you will please take notice that the defendant herein, Clarence O. Flannagan, by and through his attorney, William Katz, will move the above entitled Court in Courtroom 6 thereof, Federal Building, Los Angeles, California, on Monday, November 1, 1943, at the hour of 10:00 A. M. thereof, or as soon thereafter as counsel may be heard, to order the plaintiff to furnish and deliver to defendant herein within five days, a bill of particulars stating the facts respecting each of the matters hereinafter enumerated as to each of the

twelve counts of the amended information as follows:

COUNTS I, II, IV, V, IX

(a) What grade of beef defendant is alleged to have sold and whether such beef was a "beef carcass" or a beef cut or [60] beef cuts, and if a beef cut or beef cuts, the kind or type of cut or cuts;

(b) What the maximum price is, was or is claimed to be or have been for the beef alleged to have been sold by defendant;

(c) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer" or otherwise;

(d) Whether the sale alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(e) What grade, type or kind of pork cuts defendant is alleged to have sold;

(f) What the maximum price is, was or is claimed to be or have been for the pork cuts alleged to have been sold by defendant;

(g) Whether the sale of the pork cuts alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "certified hog processor", "hotel supply house", "packer" or otherwise;

(h) Whether the sale of the pork cuts alleged to have been made by defendant was made to a

wholesaler, retailer, purveyor of meals or otherwise;

COUNTS III and XII.

(a) What grade of beef defendant is alleged to have sold and whether such beef was a "beef carcass" or a beef cut or beef cuts, and if a beef cut or beef cuts, the kind or type of cut or cuts;

(b) What the maximum price is, was or is claimed to be or have been for the beef alleged to have been sold by defendant;

(c) Whether the sale of the beef alleged to have been [61] sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer" or otherwise;

(d) Whether the sale alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(e) What grade, type or kind of lamb cuts defendant is alleged to have sold;

(f) What the maximum price is, was or is claimed to be or have been for the lamb cuts alleged to have been sold by defendant;

(g) Whether the lamb cuts alleged to have been sold by defendant were sold by him as a "wholesaler", "peddler truck sale", "hotel supply house", "packer" or otherwise;

(h) Whether the lamb cuts alleged to have been sold by defendant were sold to a wholesaler, retailer, purveyor of meals or otherwise;

COUNTS VI and VII.

(a) What grade of beef defendant is alleged to have sold and whether such beef was a "beef carcass" or a beef cut or beef cuts, and if a beef cut or beef cuts, the kind or type of cut or cuts;

(b) What the maximum price is, was or is claimed to be or have been for the beef alleged to have been sold by defendant;

(c) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer" or otherwise;

(d) Whether the sale alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise; [62]

(e) What grade, type or kind of pork cuts defendant is alleged to have sold;

(f) What the maximum price is, was or is claimed to be or have been for the pork cuts alleged to have been sold by defendant;

(g) Whether the sale of the pork cuts alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler truck sale", "certified hog processor", "hotel supply house", "packer" or otherwise;

(h) Whether the sale of the pork cuts alleged to have been made by defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

(i) What grade, type or kind of lamb cuts defendant is alleged to have sold;

(j) What the maximum price is, was or is claimed to be or have been for lamb cuts alleged to have been sold by defendant;

(k) Whether the lamb cuts alleged to have been sold by defendant were sold by him as a "wholesaler", "peddler truck sale", "hotel supply house", "packer" or otherwise;

(l) Whether the lamb cuts alleged to have been sold by defendant were sold by defendant to a wholesaler, retailer, purveyor of meals or otherwise.

COUNTS VIII, X and XI.

(a) What grade beef defendant is alleged to have sold and whether such beef was a "beef carcass" or a beef cut or beef cuts, and if a beef cut or beef cuts, the kind or type of cut or cuts;

(b) What the maximum price is, was or is claimed to be or have been for the beef alleged to have been sold by defendant;

(c) Whether the sale of the beef alleged to have been sold by defendant was made by defendant as a "wholesaler", "peddler [63] truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer" or otherwise.

Said motion will be made upon the ground that such facts and information do not appear from and are not alleged in the amended information filed herein or any of the counts thereof and that such facts and information are necessary to enable defendant to prepare for the trial of the above entitled action.

Said motion will be based upon this notice of motion, the amended information filed herein and the law governing.

Dated this 22 day of October, 1943.

WILLIAM KATZ

Attorney for Defendant

POINTS AND AUTHORITIES

I.

Defendant incorporates by reference the points and authorities heretofore served and filed herein in support of his "Demurrer to the Amended Information" and "Notice of Motion to Quash and Set Aside Amended Information".

II.

A demand for a bill of particulars is the proper remedy to obtain necessary information to enable the defendant to prepare his defense and avoid surprise and substantial prejudice at trial.

Singer v. U. S., 48 Fed. (2) 74, 76;

Collins v. U. S., 253 Fed. 609, 610;

U. S. v. Rentelen, 233 Fed. 793, 799;

U. S. v. Greve, 12 Fed. Supp. 372, 377.

III.

Defendant is entitled to a bill of particulars to secure the information sought by him and enunciated in his motion therefor. [64]

Martin v. U. S., 20 Fed. (2) 785, 786;

Karger v. U. S., 46 Fed. (2) 302, 303;

Baker v. U. S., 115 Fed. (2) 533, 538;

U. S. v. Food and Grocery Bureau, 41 Fed.
Supp. 884, 886;

U. S. v. Allied Chemical & Dye Co., 42 Fed.
Supp. 425, 428, 9;

U. S. v. Empire State Paper Co., 8 Fed.
Supp. 220, 221.

Respectfully submitted,

WILLIAM KATZ

Attorney for Defendant. [65]

Received copy of the within this 22nd day of
October 1943.

CHARES H. CARR

U. S. Attorney

Attorney for Plaintiff

[Endorsed]: Filed Oct. 23, 1943. [66]

At a stated term, to-wit: The September Term,
A. D. 1943, of the District Court of the United
States of America, within and for the Central Di-
vision of the Southern District of California, held
at the Court Room thereof, in the City of Los An-
geles on Monday the 1st day of November in the
year of our Lord one thousand nine hundred and
forty-three.

Present: The Honorable Ben Harrison, District
Judge.

[Title of Cause.]

No. 16-107-Crim.

This cause coming on for hearing on motion of
defendant for a Bill of Particulars; Ernest A.

Tolin, Esq., Special Attorney, Department of Justice, appearing for the Government; William Katz, Esq., appearing as counsel for the defendant; James Marquardt, Court Reporter, being present and reporting the proceedings; the defendant being absent.

Attorney Katz argues in support of defendant's motion; the Court makes a statement and orders said motion denied and exception noted for the defendant. [67]

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 9th day of November in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

No. 16-107-Crim.

This cause coming on for trial on Amended Information; E. A. Tolin, Esq., Assistant U. S. Attorney, appearing as counsel for the Government; William Katz, Esq., appearing as counsel for the defendant, Clarence O. Flannagan, who is present on bond; and James Marquardt, Court Reporter, being present and reporting the proceedings:

Attorney Tolin states he is ready on counts 8, 10, 11, and 12 for trial and moves for dismissal of the other counts, and it is so ordered by the Court. It is further ordered that the cause be, and it hereby is, transferred to the calendar of Judge McCormick at 10 A. M. today for trial and witnesses are admonished. [68]

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 10th day of November in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Paul J. McCormick, District Judge.

[Title of Cause.]

No. 16,107-Crim.

This cause coming on for further jury trial; Ernest A. Tolin, Esq., Assistant U. S. Attorney, and Stanley Jewell, Esq., Attorney, O.P.A., appearing for the Government; William Katz, Esq., appearing as counsel for the defendant; Samuel Goldstein, Court Reporter, being present and reporting the proceedings; the defendant being present; the jury is present; it is ordered that trial proceed.

Attorney Katz renews motion to strike from the record Government's Exhibit No. 1. The motion is denied.

Dr. D. R. Hoffman is called, sworn, and testifies for the defendant.

Counsel approach the Bench at the request of the Court.

Witness Hoffman testifies further.

Earl E. Coward and Clinton Ben Hawkins are called, sworn, and testify for the defendant.

Clarence Flannagan, defendant, is sworn, and testifies in his own behalf.

At 11:32 A.M. the Court reminds the jury of the admonition heretofore given, and declares a recess.

Court reconvenes at 11:42 A. M.; all present as before; the defendant and jury are present; it is ordered that trial proceed.

Witness Flannagan resumes the stand and testifies further.

At 12:10 P.M. the jury is reminded of the admonition heretofore given, and Court recesses to 2 P.M.

Court reconvenes herein at 2:04 P. M.; all present as before; the defendant and jury are present; it is ordered that trial proceed.

Defendant's Exhibit A is offered and admitted into evidence.

Fred French and Graham H. Albright are called, sworn, and testify for the defendant. [79]

At 2:10 P. M. the defendant rests.

Pencil portion of Government's Exhibit No. 8 is

cut out and said portion admitted as Government's Exhibit No. 8.

At 2:15 P. M. the Government rests.

Counsel approach the Bench.

At 2:20 P.M. Attorney Tolin argues to the jury for the Government.

At 2:40 P. M. Attorney Katz argues to the jury for the defendant.

At 3:18 P.M. Attorney Tolin argues to the jury in closing for the Government.

At 3:28 P.M. the Court instructs the jury on the law of this case, and at 4 P.M. L. C. Ramsaur is sworn in as the officer to care for the jury and the jury retires to the jury room to deliberate upon its verdict.

It is ordered that requested instructions given and not given be filed herein.

At 4:07 P. M. O. S. Bulkley is sworn as an additional officer to care for the jury.

The Court orders the defendant to remain in custody until verdict of the jury.

At 4:15 P.M. Court reconvenes herein in the absence of the jury, for the purpose of marking for identification Government's Exhibits Nos. 12, 13, 14, 15 and 16; Government counsel, defendant and his counsel being present, and Court Reporter, after which Court recesses until the return of the jury.

At 5:45 P. M. Court reconvenes; all present as before, except the jury.

Pursuant to stipulation of counsel, it is ordered that a verdict may be received in the absence of

the trial judge, if rendered before 10:30 or 11 o'clock P.M., and if the jury desires to remain in deliberation after that time, they be furnished with suitable accommodations for the night by the U. S. Marshal, and that if a verdict is arrived at prior thereto, same shall be sealed and delivered to the bailiff, who shall turn it over to the Clerk, who shall keep same in his personal custody until the morning, and that the jury shall return into Court at ten o'clock A. M. November 11, 1943, at which time the Court will convene and the sealed verdict shall then be opened in the presence of the jury. It is further ordered that the defendant may remain on his present bond and that he remain in attendance until a verdict is reached or until the further order of the Court. [80]

At the hour of 6:15 P.M. the jury is ordered taken to supper in custody of the two bailiffs previously sworn, at the expense of the Government, and a recess is declared in the case pending agreement upon a verdict.

The jury returns at 8:35 P. M. and resumes deliberations.

Court reconvenes herein at 10:40 P. M.; all present as before.

The jury returns into Court, and the foreman requests that certain evidence given by certain witnesses be read by the reporter, and the reporter now reads certain testimony as requested. The reading is concluded at 11:30 P. M. and the jury again now retires, and a recess is declared until the return of the jury.

Court reconvenes herein at 12:30 A. M., November 11, 1943; all present as before; the defendant and jury are present, and in response to the Court's inquiry the foreman states that the jury has agreed upon verdict; whereupon, pursuant to the Court's order, the verdict is presented and read by the Clerk, and ordered filed and entered herein, being as follows, to wit:

* * * * *

The jury is discharged from the case and excused until notified.

It is ordered that the defendant may remain on present bond and this cause is referred to the Probation Officer for investigation and report and that hearing on said report and sentence be, and it hereby is, continued to November 23, 1943, at 10 A.M. [81]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the defendant, Clarence O. Flannagan not guilty as charged in the 8th count of the Information, and guilty as charged in the 10th count of the Information, and not guilty as charged in the 11th count of the Information, and not guilty as charged in the 12th count of the Information.

Dated, Los Angeles, Calif., November 11, 1943.

GARDNER HUNTING

Foreman of the Jury.

[Endorsed]: Filed Nov. 11, 1943. [82]

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 30th day of November in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable: Paul J. McCormick, District Judge.

[Title of Cause.]

No. 16,107—Crim.

This cause coming on for hearing on report of the Probation Officer and sentence of the defendant Clarence O. Flannagan; Ray H. Kinnison, Esq., Assistant U. S. Attorney, appearing for the Government; Wm. Ktz, Esq., appearing as counsel for the defendant; Attorney Kinnison makes a statement; Attorney Katz makes a statement on behalf of the defendant. The Court pronounces judgment against the defendant as follows: [83]

* * * * *

District Court of the United States Southern District of California, Central Division

No. 16107. Criminal Information in 12 counts for violation of U.S.C., Title Emergency Price Control Act of 1942. Secs.

UNITED STATES

v.

CLARENCE O. FLANNAGAN

JUDGMENT AND COMMITMENT

On this 30th day of November, 1943, came the United States Attorney, and the defendant Clarence O. Flannagan appearing in proper person, and by counsel, William Katz, Esq., and,

The defendant having been convicted on verdict of guilty of the offense charged in the Information in the above-entitled cause, to-wit: the 10th count thereof, unlawfully offer for sale and deliver a certain quantity of beef at a price per pound in excess of Revised Maximum Price Regulation No. 169, as amended, as set forth and charged in the 10th count of the Information herein, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, is hereby committed to the custody of the Attorney General

or his authorized representative for imprisonment for the period of Six (6) months in a Federal Jail, and pay unto the United States of America a fine in the sum of One Thousand (\$1000.) Dollars, and that said defendant be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law.

It is further ordered that execution of the term of imprisonment of six months be suspended for a period of one (1) year, and that said defendant be placed on probation for said period of time under the supervision of the Probation Officer of this Court, to whom he shall report this day, and at such further and other times as shall be required. The condition of probation are that said defendant shall refrain from the violation of any laws; that he observe all lawful regulations of governmental authorities, and otherwise, observe such additional lawful rules and regulations that the aforesaid Probation Officer may impose.

It Is Further Ordered that said defendant be granted 3 days stay of execution to pay the fine herein imposed, and that in the event an appeal is taken, that the amount of said fine be deposited in the Registry of the Court.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein in default of payment of fine.

(Signed) PAUL J. McCORMICK

United States District Judge.

[Endorsed]: Filed Nov. 30, 1943. [84]

[Title of District Court and Cause.]

NOTICE OF APPEAL UNDER RULE III

Name and Address of Appellant: Clarence O. Flannagan, 325 Santa Ana Avenue, Newport Beach, California.

Name and Address of Appellant's Attorney: Cantillon & Glover, Esqs., 832 Petroleum Building, 714 West Olympic Boulevard, Los Angeles, California.

Offense: Count X—Violation of Revised Maximum Price Regulation, No. 169, issued pursuant to the Emergency Price Control Act of 1942.

Date of Judgment: November 30, 1943.

Brief Description of Judgment or Sentence: Defendant was adjudged and sentenced to serve six months in jail and pay a fine of \$1,000.00, and be further imprisoned until payment of said fine, or until otherwise discharged as provided by law. Execution of the term of imprisonment of six months was suspended for one year and Defendant placed on probation for that period of time, [86] and in the event Defendant takes an appeal, the fine to be deposited in the registry.

Name of Prison where now confined if not on Bail: Appellant is now on bail.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeal, for the Ninth Circuit, from the judgment above mentioned on the grounds set forth below.

CLARENCE O. FLANNAGAN
Appellant

Dated: At Los Angeles, California, this 4th day of December, 1943.

GROUNDS OF APPEAL

1. The trial court erred in denying Appellant's demurrer to Count X of the Amended Information.

2. The trial court erred in denying Appellant's motion for an order directing the Government to furnish a Bill of Particulars relative to Count X of the Amended Information.

3. The trial court erred in denying Appellant's motion for a directed verdict of not guilty as to Count X of the Amended Information, made at the close of the Government's case.

4. The trial court erred in denying Appellant's motion for a directed verdict of not guilty as to Count X of the Amended Information made after both sides had rested at the close of the case.

5. The trial court erred in admitting evidence over the objection of the Appellant, which rulings were duly excepted to by Appellant. [87]

6. The trial court erred in refusing to admit evidence proffered by Appellant and objected to by the Government, to which ruling Appellant duly excepted.

7. The trial court erred in the giving of various instructions in its formal charge to the jury, which instructions were specifically excepted to by Appellant within the time and in the manner as prescribed by law.

8. The trial court erred in refusing to give various instructions requested by Appellant, which refusal was duly excepted to by Appellant within the time and in the manner as prescribed by law.

9. The evidence is insufficient to sustain the verdict of the jury as to Count X of the Amended Information.

10. The verdict as to Count X of the Amended Information is contrary to law.

11. The verdict as to Count X of the Amended Information is contrary to the evidence.

12. The verdict as to Count X of the Amended Information is contrary to the law and to the evidence.

13. That Regulation No. 169 of the Revised Maximum Price Regulations is repugnant to and in contravention of the Emergency Price Control Act and the Price Stabilization Act, as enacted and enforced.

CANTILLON & GLOVER

By JOHN E. GLOVER,

Attorneys for Appellant,

Clarence O. Flanagan [88]

Received copy of the within Notice of Appeal
this 4th day of December, 1943.

CHARLES H. CARR

U. S. Atty.

Attorney for Plaintiff

MARY WENTWORTH

[Endorsed]: Filed Dec. 4, 1943. [89]

[Title of District Court and Cause.]

ORDER FIXING BAIL AND STAYING
EXECUTION

The above named Defendant having filed his Notice of Appeal to the United States Circuit Court of Appeal, Ninth Circuit, from the judgment and sentence herein rendered on the 30th day of November, 1943, and having deposited in the registry of this court, the sum of \$1,000.00 cash, pursuant to the order of this court, made on said 30th day of November, 1943;

The Court Now, upon application of Defendant Orders that said \$1,000.00 so deposited is in lieu of supersedeas herein, and in the event of an affirmance of the judgment appealed from, or a dismissal of the appeal, said sum of \$1,000.00 so deposited shall be applied in satisfaction of the fine herein assessed.

It Is Further Ordered that execution of the judgment and sentence be stayed pending appeal, except as to the order relating to and fixing the terms of probation granted to the Defendant by order made on the 30th day of November, 1943, none of which provisions or terms are stayed pending said appeal.

[90]

In view of the foregoing, Defendant is released subject to the probationary part of sentence.

Dated: This 11th day of December, 1943.

PAUL J. McCORMICK

Judge of the United States
District Court

[Endorsed]: Filed Dec. 10, 1943. [91]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF ORDER EXTENDING TIME WITHIN WHICH TO PREPARE, SETTLE AND FILE BILL OF EXCEPTIONS, ETC.

State of California

County of Los Angeles—ss.

John E. Glover, being first duly sworn, deposes and says:

That your Affiant is one of the members of the law firm of Cantillon & Glover, Esqs., the attorneys for Clarence O. Flanagan, the above named Defendant, said firm having been retained to appeal from the judgment and sentence heretofore pronounced in the above entitled matter; that the members of said firm have been duly admitted to practice in the above entitled court.

That your Affiant has been unable to complete and lodge a proposed Bill of Exceptions and Assignments of Error in connection with the appeal herein taken, and will be unable to do so within the time allowed by law, for the reason that within the last thirty days, Richard H. Cantillon, Esq., of said law firm has been confined [92] to his home at different intervals suffering from influenza and bronchitis, and there being no other attorney in the office of said law firm, your Affiant has been compelled to handle all of the legal matters during the absence of said Richard H. Cantillon; that Affiant verily believes that he will be able to have said proposed Bill of Exceptions and Assignments of

Error prepared for lodging by the 20th day of January, 1944, and respectfully prays that the court make its order extending the time for the serving and lodging of said proposed Bill of Exceptions and Assignments of Error herein up to and including the 20th day of January, 1944; and that the United States of America, Plaintiff herein, may have up to and including the 4th day of February, 1944, within which to serve and lodge any proposed objections, amendments or additions to said proposed Bill of Exceptions and proposed Assignments of Error; and that the Defendant, Clarence O. Flanagan, may have up to and including the 19th day of February, 1944, within which to settle and have filed his Bill of Exceptions and Assignments of Error.

JOHN E. GLOVER

Subscribed and sworn to before me this 29th day of December, 1943.

EDMUND L. SMITH, Clerk,

U. S. District Court, Southern

District of California

By IRWIN HAMES, Deputy

[Endorsed]: Filed Dec. 31, 1943. [93]

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
TO PREPARE, SETTLE AND FILE BILL
OF EXCEPTIONS, ETC.

Good cause appearing therefor, and on application of John E. Glover, Esq., one of the attorneys for Defendant and Appellant, Clarence O. Flanagan, and conforming to the requirements of Rule IX of the Supreme Court Rules of Practice and Procedure in Criminal Cases;

It Is Ordered that Defendant and Appellant, Clarence O. Flanagan, may have up to and including the 20th day of January, 1944, within which to prepare, serve and lodge his proposed Bill of Exceptions and Assignments of Error; that the United States of America, Plaintiff herein, may have up to and including the 4th day of February, 1944, within which to prepare, serve and lodge any proposed objections, amendments or additions to the proposed Bill of Exceptions and Assignments of Error; and that Defendant and Appellant, Clarence O. Flanagan, may have up to and including the 19th day of February, 1944, within which to have settled and filed his [94] Bill of Exceptions and Assignments of Error in the above matter.

Dated: This 31st day of December, 1943.

PAUL J. McCORMICK

Judge of the United States
District Court

[Endorsed]: Filed Dec. 31, 1943. [95]

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the Above Entitled Court:

Sir:

Please prepare a Transcript of the record to the Circuit Court of Appeals in the above entitled cause, and include therein the following papers and orders:

1. Information, filed July 15, 1943
2. Motion to Quash Information, filed July 21, 1943
3. Demurrer to Information, filed July 21, 1943
4. Order Denying Motion to Quash and Set Aside Information, entered September 30, 1943
5. Order Sustaining Demurrer to Information with Leave to Government to Amend, filed September 30, 1943.
6. Amended Information, filed October 11, 1943
7. Motion to Quash Amended Information, filed October 18, 1943 [96]
8. Demurrer to Amended Information, filed October 11, 1943
9. Order Denying Motion to Quash Amended Information, entered October 18, 1943
10. Order Overruling Demurrer to Amended Information, entered October 18, 1943
11. Defendant's Plea of "Not Guilty", entered October 18, 1943
12. Defendant's Demand and Motion for Order Directing Government to Furnish Bill of Particulars, filed October 23, 1943

13. Order Overruling Defendant's Motion for Bill of Particulars, entered November 1, 1943

14. Government's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11, filed November 9, 1943

15. Order Dismissing Counts I, II, III, IV, V, VI, VII and IX, as set forth in Amended Information, entered October 9, 1943

16. "Not Guilty" verdicts on Counts VIII, XI and XII of Amended Information, Returned November 10, 1943

17. "Guilty" Verdict as to Count X of Amended Information, Returned November 10, 1943

18. Order Entered November 23, 1943, Referring Case to Probation Officer

19. Judgment and Sentence of the Court, Made and Entered November 30, 1943

20. Notice of Appeal, filed December 4, 1943

21. Order Fixing Bail and Staying Execution Pending Appeal, Entered December 1, 1943

22. Order Extending Time to File Bill of Exceptions, Entered December 31 1943

23. Minute Entry Showing Lodging of Proposed Bill of Exceptions and Filing of Assignments of Error January 20, 1944

24. Order Enlarging Time to Government to Lodge Proposed [97] Amendments to Proposed Bill of Exceptions, Entered February 7, 1944

25. Assignments of Error on Appeal, filed January 20, 1944

26. Praecipe of the Record on Appeal, filed April 1, 1944

Dated: This 1st day of April, 1944

CANTILLON & GLOVER

By RICHARD H. CANTILLON

Attorneys for Defendant

Received copy of the within Praeceptum this 1st day of April, 1944.

CHARLES H. CARR

U. S. Atty.

By R. MACKAY

Attorney for United States.

[Endorsed]: Filed April 1, 1944. [98]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 98 inclusive contain full, true and correct copies of: Minute Order Entered July 15, 1943; Information; Motion to Quash and Set Aside Information; Demurrer to Information; Minute Orders Entered September 30, 1943 and October 11, 1943 respectively; Amended Information; Motion to Quash and Set Aside Amended Information; Demurrer to Amended Information; Minute Order Entered October 18, 1943; Motion for Bill of Particulars; Minute Order Entered November 1, 1943; Minute Order Entered November 9, 1943; Government's Exhibits Nos. 1, 2, 3, 4, 5, 7, 9,

10, and 11; Minute Order Entered November 10, 1943; Verdict; Minute Order Entered November 30, 1943; Judgment and Commitment; Notice of Appeal; Order Fixing Bail and Staying Execution; Affidavit in Support of Order Extending Time Within Which to Prepare, Settle and File Bill of Exceptions, etc.; Order Extending Time Within Which to Prepare, Settle and File Bill of Exceptions etc.; and Praecipe which, together with the Original Assignment of Errors and Bill of Exceptions, transmitted herewith, constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$34.55 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 13 day of April, 1944.

[Seal]

EDMUND L. SMITH, Clerk

By THEODORE HOCKE,
Deputy Clerk

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 16107

CLARENCE O. FLANNAGAN,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

ORDER ENLARGING TIME

Upon reading affidavit of Ernest A. Tolin,

It Is Ordered That the time within which the appellee may lodge its proposed amendments, include amplifications, reductions, and corrections to the proposed Bill of Exceptions lodged by appellant be enlarged to February 29, 1944, and that the Court have to March 15, 1944, within which to settle the same.

Dated: February 4th, 1944.

CURTIS D. WILBUR

FRANCIS A. GARRECHT

WILLIAM HEALY

Judges of the Circuit Court

A true copy.

Attest: Feb. 4, 1944.

PAUL P. O'BRIEN

Clerk.

[Endorsed]: Filed Feb 4, 1944. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT FOR ENLARGEMENT
OF TIME

State of California

County of Los Angeles—ss.

Ernest A. Tolin, being first duly sworn, deposes and says:

That he is the Assistant United States Attorney who has been assigned to represent the appellee in the above entitled matter:

That in order to properly prepare the Government's proposed amendments to the Bill of Exceptions lodged by appellant it has become necessary for affiant to order further portions of the transcript of the trial of the case than has heretofore been prepared by the reporter, that said additional portion of the transcript was not delivered by the reporter until February 1, 1944, that there does not remain sufficient time with which to properly prepare the Government's proposed amendments to the Bill of Exceptions within the time at present fixed, that affiant is engaged in the preparations of proposed amendments to Bill of Exceptions in three other matters and is engaged in matters pending before the United States District Court and set for trial during the current week.

Wherefore, affiant prays that this Honorable Court extend the time within which appellee may lodge its proposed amendments, including amplifications, reductions, and corrections to the Bill of

Exceptions lodged by appellant to the 29th day of February, 1944.

ERNEST A. TOLIN

Subscribed and sworn to before me this 2 day of February, 1944.

[Seal] MARY M. DONETTI

Notary Public in and for said County and State.

My Commission Expires Feb. 26, 1947.

[Endorsed]: Filed Feb. 7, 1944. Edmund L. Smith, Clerk, by Irwin Hames, Deputy Clerk.

In the United States District Court, Southern
District of California, Central Division

No. 16107

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLARENCE O. FLANNAGAN,

Defendant.

DEFENDANT'S ASSIGNMENTS
OF ERROR

Comes now the Defendant and Appellant in the above entitled and numbered cause, and files the following Assignments of Error upon which he will rely in the prosecution this, his appeal, herewith petitioned for in said cause, from the judgment and sentence of this court, entered on the 30th day of November, 1943:

ASSIGNMENT OF ERROR No. 1

That the Court erred in denying the Motion to Quash and Set Aside the Amended Information, made by this Defendant on the 18th day of October, 1943, as to Count X of said Amended Information, which Motion was based upon the following grounds:

That said Count X fails to state facts sufficient to constitute a criminal offense and that the laws, rules and regulations upon which said Information purports to be based are arbitrary, discriminatory, unreasonable, invalid, unconstitutional and void.

That Defendant duly excepted to said ruling of the trial court.

ASSIGNMENT OF ERROR No. 2

That the Court erred in overruling the Demurrer of the Defendant to Count X of the Amended Information, which Demurrer was based upon the following grounds; and to which ruling the Defendant duly excepted:

(a) That Count X of said Amended Information fails to state facts sufficient to constitute a criminal offense;

(b) That Count X of said Amended Information is uncertain in that it cannot be determined therefrom:

1. What crime, if any, Defendant is alleged to have committed:

2. Whether the sale of the beef alleged to have been sold by Defendant was made by Defendant as

a “wholesaler”, “peddler truck sale”, “independent wholesaler”, “hotel supply house”, “slaughterer”, “packer”, or otherwise.

3. Whether the sale alleged to have been made by Defendant was made to a wholesaler, retailer, purveyor of meals or otherwise.

4. In what respects, if any, the purported crime attempted to be alleged in said Count X differs from the purported crimes attempted to be alleged in Counts I, II, III, IV, V, VI, VII, IX and XII of said Amended Information.

(c) That Count X of said Amended Information is indefinite in each and all of the respects in which it is heretofore set forth to be uncertain.

(d) That Count X of said Amended Information is ambiguous in each and all of the respects in which it is heretofore set forth to be uncertain and indefinite.

ASSIGNMENT OF ERROR No. 3

That the Court erred and abused its discretion in denying the Motion and Demand of the Defendant to compel the Government to furnish Defendant a Bill of Particulars as to Count X of the Amended Information, which was as follows:

(a) What grade of beef Defendant is alleged to have sold and whether such beef was a “beef carcass” or a beef cut or beef cuts, and if a beef cut, or beef cuts, the kind and type of cut or cuts;

(b) What the maximum price is, was or is claimed to be, or have been, for the beef alleged to have been sold by Defendant;

(c) Whether the sale of the beef alleged to have been sold by Defendant was made by Defendant as a “wholesaler”, “peddler truck sale”, “independent wholesaler”, “hotel supply house”, “slaughterer”, “packer”, or otherwise.

The Defendant duly excepted to the ruling thereon.

ASSIGNMENT OF ERROR No. 4

That the Court erred in allowing into evidence on direct examination the testimony of the Government’s Witness Kilduff, relating to a conversation between the Defendant and the Witness Kilduff tending to establish another transaction not charged in any Count of the Amended Information, and assertedly occurring on June 24, 1943, and involving a sale of meat on that day to the Witness Kilduff purportedly in excess of that then lawful under the provisions of the Revised Maximum Price Regulation 169 as amended. The Witness Kilduff was asked the following question:

Q. Tell us what you said and what he said about it?

The Defendant objected to the question being answered on the following specified grounds: First, that it was incompetent; second, that it was irrelevant; third, that it had no bearing on the issues of the case; fourth, that a corpus delicti had not been established. That the trial court overruled the objections and each of them of the Defendant, and the Defendant took his exception to said ruling.

The substance of the conversation admitted over objection was:

Q. Tell us what was said about it, if you recall?

Objection was made to the conversation on the grounds that it was incompetent, irrelevant, and had no bearing on the issues; no foundation; and no corpus delicti had been established, which objection was overruled and exception taken.

The substance of the conversation was that Flannagan stated to the Witness that he had heard the Witness wanted some meat; that he could supply him with a little, but probably not all he needed; and that there was an overage on it; that at that time no one other than Flannagan was present; that the Witness saw the truck containing meat; that he purchased meat and Flannagan carried it into the Witness' ice box; that at the said time, the Defendant delivered to the Witness Government's Exhibit No. 1, and that he received from Flannagan the meat that is listed on the invoice.

In response to a question as to whether anything was said by Flannagan or by the Witness with regard to any other moneys or payments, the Witness stated there was not much of any thing said, only he told me how much other cash I owed; that was for him; that the Witness did not recall the amount in money.

ASSIGNMENT OF ERROR No. 5

That the Court erred in allowing into evidence Government's Exhibit No. 1, a document purporting to be a written invoice assertedly handed by the Defendant to the Witness Kilduff on January 24, 1943, and relating to a sale of meat made by the Defendant to said Witness on that said day, which said transaction was not made the basis of any Count contained in the Amended Information; that the Defendant objected to the introduction of said Exhibit No. 1 on the following grounds: (1st) that it is incompetent; (2d) that it is irrelevant; (3rd) that it is immaterial; and (4th) that it had no bearing on the issues of the case.

The objections, and each of them, were overruled and the Defendant duly excepted.

ASSIGNMENT OF ERROR No. 6

That the Court erred in allowing the Government's Witness Kilduff, while on direct examination, to refer to and inspect the writing, Government's Exhibit No. 6 for identification, over the objections of the Defendant that the said writing was: (1st) incompetent; (2d) irrelevant; (3rd) immaterial; (4th) hearsay; and (5th) that it was matter having no bearing on the case, to all of which the Defendant duly excepted.

ASSIGNMENT OF ERROR No. 7

That the Court erred in permitting the Government to establish through the testimony of the Witness Kilduff, on direct examination, the occurrence

of an asserted transaction had as between the Witness Kilduff on the 25th day of June, 1943, and the Defendant, relating to the sale of meat by the Defendant to the Witness Kilduff at a price in excess of that lawful under the provisions of Revised Maximum Price Regulation 169, the Defendant having objected to the introduction of such evidence on the ground that the same was: (1st) incompetent; (2d) irrelevant; (3rd) immaterial; and (4th) that it had no bearing on the issues in the instant case. The Defendant duly excepted to the Court's ruling on said objections.

ASSIGNMENT OF ERROR No. 8

That the Court erred in overruling the objection of the Defendant made after the Witness Kilduff had read and inspected the writing, Government's Exhibit No. 6, for identification, to the question, and in allowing the answer relative to an asserted overage paid for meat on June 25, 1943:

Q. By Mr. Tolin: Is your memory now refreshed, Mr. Kilduff, as to the amount that you paid to Mr. Flannagan in addition to the check that you gave him on the 25th day of June of 1943?

Q. Well, just what it says there.

A. Tell us.

Mr. Katz: Just a moment, if the Court please. I will object to what it says on the paper.

The Court: Yes, that will go out, gentlemen. You disregard it.

Q. By Mr. Tolin: Tell us how much you paid him over and above the amount of the check that you gave him on the 25th day of June.

Mr. Katz: Objected to, if the Court please; incompetent, irrelevant and immaterial. It has already been asked and answered.

The Court: Overruled.

Mr. Katz: Exception noted.

The Witness: \$39.48

to which ruling the Defendant duly excepted.

ASSIGNMENT OF ERROR No. 9

That the Court erred in overruling the objection of the Defendant made after the Witness had read and inspected the writing, Government's Exhibit No. 6, for identification, to the question and in allowing the answer of said Witness relative to asserted overage paid by the Witness to the Defendant for meat on the 28th day of June, 1943:

Q. By Mr. Tolin: Is your memory now refreshed, Mr. Kilduff, as to the amount you paid him on the 28th day of June, 1943, over and above the amount of the check?

A. It is on there. \$29.75.

Mr. Katz: Just a minute, if the Court please. I will move to strike for the purpose of the objection.

The Court: That may go out. Disregard it, gentlemen.

Q. By Mr. Tolin: Mr. Kilduff, is your memory now refreshed as to the amount that you paid over and above the amount of the check on the 28th of June, 1943? Please tell us yes or no.

A. Yes.

Q. What amount did you pay over and above the amount of the check on that date; that is to say, on the 28th day of June of 1943?

A. \$29.75.

Q. What is this that I have shown you here, Exhibit 6, for identification?

A. The statement that I gave on that day.

Q. To whom?

Mr. Katz: Objected to, if the Court please; incompetent, irrelevant and immaterial. The statement is hearsay.

The Court: Sustained.

Q. By Mr. Tolin: What was the date on which you gave this statement?

A. 28th of June.

to which ruling the Defendant duly excepted.

ASSIGNMENT OF ERROR No. 10

That the Court erred in denying the Defendant's motion for a directed verdict, made at the conclusion of the Government's case, based on the grounds: (1st) that the allegations contained in Count X did not set forth the commission of an offense against the Government; and (2d) that the evidence adduced by the Government was insufficient to establish the commission of the offense

alleged in Count X. The Defendant duly excepted to the ruling on the motion.

ASSIGNMENT OF ERROR No. 11

That the Court erred in denying the motion of the Defendant for a directed verdict made after both the Government and the Defendant had rested their respective cases, based on the grounds: (1st) that the allegations contained in Count X did not set forth the commission of an offense against the Government; and (2d) that the evidence adduced by the Government was insufficient to establish the commission of the offense alleged in Count X. The Defendant duly excepted to the ruling on the motion.

ASSIGNMENT OF ERROR No. 12

The Court erred in giving to the jury the following instruction offered by the government and that this portion of the court's charge was duly excepted to by the defendant in the manner and within *the prescribed* by law.

PLAINTIFF'S INSTRUCTION No. 1

I am *about instruct* you as to what the highest legal prices that could be charged retail meat dealers for beef were on the dates pertinent to the several counts of the Information in this case.

Before giving you such maximum prices, I instruct you that the prices I will read to you are deemed to include the highest legal price for the

meat and service charge. On the dates with which you are concerned, it was not lawful for a seller of meat to a retail meat dealer, to add any charge or bonus, or side money in any amount whatsoever, to the prices I am about to quote to you.

Emergency Price Control Act of 1942.

Revised Maximum Price Regulations 169, as amended by Amendment 6, (dated April 12, 1943, effective April 14, 1943).

The prices as to Counts 10, 11, and 12, are taken from R.M.P.R. 169, as amended by Amendment 15, dated June 7, 1943, effective June 19, 1943).

Instruction No. 1

Given as Requested: ✓

Given as Modified:

Refused:

.....

United States District Judge.

ASSIGNMENT OF ERROR No. 13

The court erred in giving to the jury the following instruction offered by the government and that this portion of the court's charge was duly excepted to by the defendant in the manner and within the time prescribed by law.

PLAINTIFF'S INSTRUCTION No. 5

On the third of June, 1943, the highest price at which it was lawful to offer for sale or to sell and deliver a U. S. Grade A beef carcass to a retail dealer was twenty-four and one quarter cents per pound.

Revised Maximum Price Regulation 169, as amended by Amendment 6, dated April 12, 1943, effective April 14, 1943.

To the price set forth in the Table (1364.452 of Reg. 169 as amended by amendment 6) is added the allowance for differential due vendors in Zone I, which includes all of California. (136.452 of R.M.P.A. 169, sub 2.)

There is also added the addition allowed for Peddler-Truck selling. (Section 1364.454 of R.M.P.R. 169 as amended, sub. G.)

Instruction No. 3.

Given as Requested: ✓

Given as Modified: _____

Refused: _____

United States District Judge.

ASSIGNMENT OF ERROR No. 14

The court erred in giving to the jury the following instruction offered by the government and that this portion of the court's charge was duly excepted to by the defendant in the manner within the time prescribed by law.

PLAINTIFF'S INSTRUCTION No. 5

On the 25th day of June, 1943, the highest price at which it was lawful to offer for sale or to sell and deliver U. S. Grade A beef to a retail dealer was twenty-two and one quarter cents per pound.

Emergency Price Control Act of 1942.

R.M.P.R. 169 as amended by Amendment 15,

dated June 7, 1943, effective June 19, 1943. (Table in 1364.452 of the Regulation as amended.)

To the prices set forth in the Table, is added the allowance for differential due vendors in Zone I; which includes all of California. (Section 1364.452 of R.M.P.R. 169 as amended, Sub. 2.)

There is also added the addition allowed for Peddler-Truck selling. (Section 1364.454 of R.M.P.R. 169 as amended, Sub. G.)

Instruction No. 5.

Given as Requested: ✓

Given as Modified:

Refused:

United States District Judge.

ASSIGNMENT OF ERROR No. 15

The court erred in giving to the jury the following instruction offered by the government and that this portion of the court's charge was duly excepted to by the defendant in the manner and within the time prescribed by law.

PLAINTIFF'S INSTRUCTION No. 6

I have quoted you a price of twenty-four and one quarter cents a pound as the legal maximum price for a U. S. Grade A beef carcass on June 3, 1943; and a legal maximum price for the same quality beef on June 25, 1943, as twenty-two and one quarter cents per pound.

In order that you will not be confused by the fact that these prices vary, I explain to you that one set

of prices was lawful between April 14, 1943 and June 19, 1943. On this latter date, a new price list went into effect. The date alleged with respect to Count VIII is within the period of time covered by one maximum price.

All other counts of the Information allege dates within the time period covered by the superseding price list.

Instruction No. 6

Given as Requested:

Given as Modified ✓

Refused:

.....

United States District Judge.

ASSIGNMENT OF ERROR No. 16

The court erred in giving to the jury the following instruction offered by the government and that this portion of the court's charge was duly excepted by the defendant in the manner and within the time prescribed by law.

PLAINTIFF'S INSTRUCTION No. 8

On the 28th day of June, 1943, the highest price at which it was lawful to offer for sale or to sell and deliver a U. S. Grade B beef carcass to a retail dealer was twenty and one quarter cents per pound.

Instruction No. 8

Given as Requested: ✓

Given as Modified:

Refused:

.....

United States District Judge.

ASSIGNMENT OF ERROR No. 17

The court erred in giving to the jury the following instruction offered by the government and that this portion of the court's charge was duly excepted to by the defendant in the manner and within the time prescribed by law.

PLAINTIFF'S INSTRUCTION No. 11

On the 25th day of June, 1943, the highest price at which it was lawful to offer for sale or to sell and deliver the following mentioned varieties of meat to a retail dealer were as follows: Oxtail, fourteen and three quarter cents per pound; Brain, ten and three quarter cents per pound; Heart, eighteen and three quarter cents per pound; Liver, twenty-six and three quarter cents per pound; Tongue, twenty-five and three quarter cents per pound.

Instruction No. 11

Given as Requested: √

Given as Modified:

Refused:

.....

United States District Judge.

ASSIGNMENT OF ERROR No. 18

The court erred in giving to the jury the following instruction offered by the government and that this portion of the court's charge was duly excepted to by the defendant in the manner and within the time prescribed by law

PLAINTIFF'S INSTRUCTION No. 12

The defendant is here prosecuted for alleged violations of the Emergency Price Control Act of 1942. This law was adopted by the Congress of the United States pursuant to authority given to the Congress of the United States by the Constitution. You are not concerned with its wisdom or unwisdom. It is the law of the land and you must be governed by it in the determination of this case. This law the Congress had the right to pass and it does not violate any of the constitutional rights of any person. The maximum prices at which various meats can be lawfully sold to retail dealers as I shall give them to you have been lawfully fixed under the Emergency Price Control Act of 1942 to which I have just referred and such lawfully fixed maximum prices are binding upon you and must be so considered in your deliberations.

Instruction No. 12

Given as Requested:

Given as Modified: ✓

Refused:

.....

United States District Judge.

ASSIGNMENT OF ERROR No. 19

The court erred in giving to the jury the following instruction offered by the government and that this portion of the court's charge was duly excepted to by the defendant in the manner and within the time prescribed by law.

PLAINTIFF'S INSTRUCTION No. 13

The Emergency Price Control Act of 1942, provides that any person who wilfully violates certain provisions of the Act shall be guilty of an offense.

Among the provisions of the Act to which this provision applies is the following:

“It shall be unlawful, regardless of any contract, agreement, * * * or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, * * * or otherwise do or omit to do any act, in violation of any regulation or order * * * of any price schedule effective in accordance with the provisions of” this Act.

The prices which I shall read to you as the highest lawful prices in effect on certain days for the several meat items to which I shall refer were fixed in accordance with the Emergency Price Control Act of 1942 from which I have just read and those prices, and each and every one of such prices was accordingly fixed by law.

Emergency Price Control Act of 1942, Section 4(a), 205(a).

Instruction No. 13

Given as Requested: ✓

Given as Modified:

Refused:

.....

United States District Judge.

ASSIGNMENT OF ERROR No. 20

The court erred in giving to the jury the following instruction offered by the government and that this portion of the court's charge was duly excepted to by the defendant in the manner and within the time prescribed by law.

PLAINTIFF'S INSTRUCTION No. 14

This is an offense requiring a specific intent, and such intent must be shown to exist beyond a reasonable doubt. The intent on the part of the defendant may be shown by his acts and declarations and by the circumstances surrounding his actions which, when taken together, must prove beyond a reasonable doubt that the defendant had the specific intent to wilfully sell and deliver meat at a price or prices in excess of the lawful price or prices.

If you are convinced beyond a reasonable doubt that the defendant did in fact sell meat to any one, or more of the persons named in the several counts of the Information, and that he did in fact charge a price or prices for such meat in excess of the prices I have read to you, and that he at such time or times intended to so sell such meat at a higher price or prices than permitted by the Maximum Price Regulations promulgated under the Emergency Price

Control Act of 1942, then you will find that he did so with a specific intent.

Instruction No. 14

Given as Requested: ✓

Given as Modified:

Refused:

.....

United States District Judge.

ASSIGNMENT OF ERROR No. 21

The court erred in refusing to give the following defendant's proposed and offered instruction to which refusal the defendant within the time and in the manner prescribed by law duly excepted.

DEFENDANT'S REQUESTED INSTRUCTION No. 2

The mere fact that an information has been filed charging the defendant with a crime does not itself raise any presumption or inference as to the guilt of the defendant. The mere fact that he has been brought into court by the ordinary criminal process and is here on trial, should not be considered by you as any evidence whatsoever of his guilt.

ASSIGNMENT OF ERROR No. 22

The court erred in refusing to give the following defendant's proposed and offered instruction to which refusal the defendant within the time and in the manner prescribed by law duly excepted.

DEFENDANT'S PROPOSED INSTRUCTION
No. 5

You are instructed that the presumption of innocence is not a mere matter of form, to be disregarded by you at your pleasure, but is an essential, substantial part of the law of the land, and binding upon you in this case, and it is your duty to give the defendant the full benefit of this presumption and to acquit him, unless the evidence in the case convinces you beyond all reasonable doubt of the guilt of the defendant.

ASSIGNMENT OF ERROR No. 23

The court erred in refusing to give the following defendant's proposed and offered instruction to which refusal the defendant within the time and in the manner prescribed by law duly excepted.

DEFENDANT'S PROPOSED INSTRUCTION
No. 6

The jury is instructed that each essential independent fact necessary to complete a chain or series of independent facts tending to establish a presumption of guilt, should be established to the same degree of certainty as the main fact which these independent circumstances taken together tend to establish, that is, each essential independent fact in the chain or series of facts relied upon to establish the main fact, must be established to a moral certainty and beyond a reasonable doubt and to the entire satisfaction of the jury. The circumstances

must all concur to show that the defendant committed the crime and must all be inconsistent with any other rational conclusion and must exclude to a moral certainty and to the entire satisfaction of the jury any other hypothesis but the single one of guilt.

ASSIGNMENT OF ERROR No. 24

The court erred in refusing to give the following defendant's proposed and offered instruction to which refusal defendant within the time and in the manner prescribed by law duly excepted.

DEFENDANT'S PROPOSED INSTRUCTION No. 8

It is not your duty to look for some theory upon which to convict the defendant, but, on the contrary, it is your duty and the law requires you to, if you can reasonably do so, reconcile any and all circumstances that have been shown with the innocence of the defendant, and so acquit him.

ASSIGNMENT OF ERROR No. 25

The court erred in refusing to give the following defendant's proposed and offered instruction to which refusal the defendant within the time and in the manner prescribed by law duly excepted.

DEFENDANT'S PROPOSED INSTRUCTION No. 15

If you believe from the evidence in this case that any witness in the case was influenced or induced to

become such a witness and to testify in this case by any hope held out that he would not be prosecuted for any reason for offenses committed, then the jury should take such facts into consideration in determining the weight and credit which should be given to the testimony of a witness thus obtained.

ASSIGNMENT OF ERROR No. 26

The court erred in refusing to give the following defendant's proposed and offered instruction to which refusal the defendant within the time and in the manner prescribed by law duly excepted.

DEFENDANT'S PROPOSED INSTRUCTION No. 16

You cannot base a verdict of guilt upon extra-judicial oral admissions, or statements of a defendant alone, unless there is other evidence independent of such extra-judicial oral admissions or statements which establishes the body of the crime with which defendant is charged, or what is known as the corpus delicti, and if you do not believe after a consideration of all the evidence that the body of the crime or the corpus delicti is established by evidence other than such extra-judicial oral admissions or statements, then and in that event, you cannot consider such extra-judicial admissions or statements for any purpose.

ASSIGNMENT OF ERROR No. 27

The court erred in refusing to give the following defendant's proposed and offered instruction to

which refusal the defendant within the time and in the manner prescribed by law duly excepted.

DEFENDANT'S PROPOSED INSTRUCTION
No. 17

In order to convict the defendant upon the evidence of circumstances, it is necessary not only that all the circumstances concur to show beyond a reasonable doubt that a crime was committed as alleged in the information, but that the defendant was the one who committed such crime and that they are inconsistent with any other rational conclusion. It is not sufficient that the circumstances prove, coincide with, account for, and therefore render probable the theory sought to be established by the prosecution, but they must exclude to a moral certainty every other theory but the single one of guilt, or the jury must find the defendant not guilty.

ASSIGNMENT OF ERROR No. 28

The court erred in refusing to give the following defendant's proposed and offered instruction to which the defendant within the time and in the manner prescribed duly excepted.

DEFENDANT'S REQUESTED INSTRUCTION
No. 22

You are instructed that under and by virtue of Maximum Price Regulations No. 148, 169 and 239, any person who in the course of trade or business buys or receives any carcasses or cuts governed by

such regulation is equally as guilty as the seller in the commission of the crime. If you find that any witness or witnesses bought or received such carcasses or cuts, each such witness was a principal and the testimony of each such witness should be received with caution and viewed with distrust and you should not accept it unless it so far harmonizes with the other testimony in the case as to leave in your mind no reasonable doubt of its truth.

ASSIGNMENT OF ERROR NO. 29

The court erred in refusing to give the following defendant's proposed and offered instruction to which refusal the defendant within the time and in the manner prescribed by law duly excepted.

DEFENDANT'S REQUESTED INSTRUCTION No. 23

You are instructed that Maximum Price Regulation No. 169, issued by the Price Administrator of the office of Price Administration, governs beef and veal carcasses and wholesale cuts and, in so far as is material to this case, provides as follows:

Section 1364.401 (a) Beef Carcasses and Wholesale Cuts.

On and after December 16, 1942, regardless of any contract, agreement or other obligation, no person shall sell or deliver any beef carcass or any wholesale cut, and no person shall buy and receive beef carcasses or wholesale beef cuts at a price higher than the maximum price permitted by Section 1364.451; and no person shall agree, offer, solicit

or attempt to do any of the foregoing. The provisions of this revised maximum price regulation No. 169 shall not be applicable to sales of beef carcasses or beef wholesale cuts to a purchaser, if, prior to December 10, 1942, such beef carcasses or beef wholesale cuts have been received by a carrier other than a carrier owned or controlled by the seller, for shipment to such purchaser. "Person", "Beef carcasses" and "Beef wholesale cut" are defined in Section 1364.55.

Section 1364.402. Exempt sales.

The provisions of this Revised Maximum Price Regulation No. 169 shall not apply

(a) To sales at retail:

(1) As defined in Section 1364.455 with respect to sales of beef; and

(2) As defined in Section 1364.470 with respect to sales of veal; and

(3) As defined in Section 1364.477 with respect to sales of processed products;

(b) To deliveries of beef made to any political subdivision or agency of any state or of the United States under contracts entered into prior to December 10, 1942: provided, that this exemption shall not be construed to permit the upward revision of any prices fixed in such contracts.

Section 1364.406. Evasion.

(a) The price limitation set forth in this revised price regulation shall not be evaded, either by direct or indirect methods, in connection with an offer, solicitation, agreement, sale, delivery, purchase or receipt of, or relating to, beef, veal, or

processed products, separately or in conjunction with any other commodity or services or by way of any commission, service, transportation, wrapping, packaging or other charge, or discount premium or other privilege, or by tying agreement or other trade understanding, or by changing the selection of grading, or the style of dressing, cutting, trimming, cooking or otherwise processing or the canning, wrapping or packaging of beef, veal or processed products, or otherwise: Provided, that the payment by a buyer to a seller for icing services performed by the seller after April 2, 1943, and before delivery of any beef carcass or wholesale cut or veal carcass or wholesale cut to a railroad whose charges are paid directly to such railroad by the buyer shall not be construed as an evasion of such price limitations, if the charge for such icing services is no higher than the cost actually incurred by the seller in performing such service and in no event, higher than the charge which could lawfully have been made by the railroad if such service had been performed by the railroad.

(b) Specifically, but not exclusively, the following practices are prohibited:

(1) Unnecessarily routing beef or veal through any distribution point in order to obtain a higher zone price or for the purpose of making a higher transportation or local delivery charge.

(2) Falsely or incorrectly grading or invoicing beef, veal, or processed products.

(3) Selling or invoicing kosher beef, kosher veal, or kosher processed products to purchasers who are not bona fide buyers of kosher meat.

(4) Selling or invoicing beef or veal at the prices established for sales by hotel supply houses to buyers other than bona fide purveyors of meals, war procurement agencies, or other government agencies.

(5) Offering, selling or delivering beef, veal or any processed products on condition that the purchaser is required to purchase some other commodity.

(6) Making or receiving a charge for delivery on the basis of a route different from that actually followed and in excess of that permitted for the route by which beef or veal was actually delivered.

(7) Selling or transferring title to cattle or calves by a purchaser thereof at a lower price than was paid for such cattle or calves and/or repurchasing purchasing, or receiving title to dressed carcasses or wholesale cuts derived from such cattle or calves after the cattle or calves have been slaughtered by a custom slaughterer.

(8) Charging, paying, billing, or receiving any consideration for or in connection with any service for which a specific allowance has not been provided in this Revised Maximum Price Regulation No. 169.

Section 1364.411. Duty to Maintain Grades.

No person shall sell, offer to sell, deliver or break any beef carcass or veal carcass, unless each such carcass has been graded in accordance with the provisions of this section. No custom slaughterer shall ship or deliver any beef carcass or wholesale cut, or veal carcass or wholesale cut unless each such carcass or wholesale cut has been graded in accord-

ance with the provisions of this section. Each person shall maintain uniform grades, as specified in paragraph (a) of this section; and shall determine his maximum prices upon the basis of such uniform grades, as provided in paragraph (b) of this section.

(a) Uniform grades.

(1) Beef carcasses and wholesale cuts derived from steers, heifers and cows shall be graded into the following uniform grades: choice, good, commercial, utility, and cutter and canner; except that no cow carcass or wholesale shall be graded choice. Beef carcasses and wholesale cuts derived from bulls and stags shall be graded in the same manner, except that no bull carcass or wholesale cut shall be graded choice or good, and no stag carcass or wholesale cut shall be graded choice. In determining the grade of each beef carcass or beef wholesale cut, the "Specifications for Official United States Standards for Grades of Carcass Beef" shall be used, except that the specifications therein for the two grades, prime and choice, shall be combined and treated as a single grade choice, and the specifications therein for the two grades, cutter and canner, shall be combined and treated as a single grade.

(b) Duty to determine maximum prices on the basis of uniform grades.

The word "grade" as used in Sections 1364.451, 1364.452, 1364.466 and 1364.467 and in paragraph (c) of this section, means any uniform grade referred to in paragraph (a) of this section and shall not be construed to mean the private grade of an individual seller.

Irrespective of the price grading system heretofore used by the seller, it shall be the duty of the seller, except as provided in paragraph (c) (3), to have classified into the uniform grades provided for in paragraph (a) of this section, by an official grader of the United States Department of Agriculture, the beef carcasses and beef wholesale cuts of cattle slaughtered by the seller or sold by the seller, and then to determine the maximum price for each grade of beef carcass and beef wholesale cut by reference to Sections 1364.451 and 1364.452.

(c) Duty to identify products by sex marks.

The sex identification shall be stamped on all bull and stag carcasses and wholesale cuts. The grade and prescribed sex identification of each beef carcass and wholesale cut, and veal carcass and wholesale cut must appear on the seller's invoice.

(1) The appropriate grade for each uniform grade shall be as follows:

Beef Grade

Choice or AA

Good or A

Commercial or B

Utility or C

Cutter)

Canner) or D

Section 1364.451. Maximum Prices for Beef carcasses and wholesale cuts.

Subject to the pricing instructions contained in paragraph (a), the maximum price of each grade of each beef carcass or wholesale cut shall be the

maximum price determined as provided in paragraph (b).

(a) Pricing instructions.

(1) Whenever used in this Revised Maximum Price Regulation No. 169, the term "lower price zone" means a price zone having a lower zone price, and the term "higher price zone" means a price zone having a higher zone price; the words "lower" and "higher" used in the respective terms shall not be construed to refer to the numerical designation of any zone.

(2) Except for the additions permitted in Schedule III hereof, incorporated herein as Section 1364.454, the zone price shall be the delivered price anywhere within the zone to which such price applies. Schedule I (paragraph (a) to (j) inclusive) hereof, incorporated herein as Section 1364.452 contains a statement describing the geographical limits of each price zone and the zone prices established therefor.

(3) The applicable zone price shall be the price specified in Schedule I (Section 1364.452) for the zone in which is located the seller's distribution point:

(i) At which the buyer takes actual physical possession of the meat; or

(ii) From which local delivery to the buyer's place of business begins; or

(iii) From which the meat, consigned to the buyer, (a) is delivered to a common carrier, other than a railroad, for shipment to the buyer, who pays the shipping charges directly to the carrier, or (b) is delivered to a railroad for shipment at the car-

load rate to the buyer who pays the shipping charges directly to the carrier.

(iv) In the case of a less than carload rail shipment, other than an express shipment to a purveyor of meals, the applicable zone price shall be the price for the zone in which is located the rail unloading station nearest to the buyer's place of business.

(v) On sales to purveyors of meals the distribution point may be, in addition to those listed, the point at which meat consigned to the buyer is delivered to a railway express company for shipment by express to the buyer who pays the shipping charges directly to the carrier.

(4) Except as permitted in paragraph (l), (m), (n), (o), or (p) of Schedule I (Section 1364.452), regardless of any contract, agreement or other obligation, no person shall sell or deliver any beef or any part or portion of any beef carcass and no person in the course of trade or business shall buy or receive any beef or any part or portion of any beef carcass or a beef wholesale cut unless such beef or part or portion is a beef carcass or a beef wholesale cut as defined in Section 1364.455, for which applicable prices have been established.

(5) On and after April 22, 1943, regardless of any contract, agreement or other obligation, no person shall sell or deliver any ground, chopped or comminuted meat containing any proportion of beef or any miscellaneous beef item and no person in the course of trade or business shall buy or receive any ground, chopped or comminuted meat containing any proportion of beef or any miscellaneous beef

item unless such ground, chopped or comminuted meat is ground beef and such miscellaneous beef item is a miscellaneous beef item as defined in Section 1364.452 (p), for which applicable prices have been established.

(b) Maximum price.

The maximum price for each grade of each beef carcass or beef wholesale cut shall be the applicable zone price determined in accordance with the provisions of paragraph (a) of this Section 1364.451 and specified in Schedule I, minus the required deductions, if any, specified in Schedule II, plus the permitted additions, if any, specified in Schedule III.

Section 1364.452. Schedule I. Beef price zones and applicable zone prices.

(a) Zone 1.

(1) Zone 1 includes the following area: Washington, Oregon, California and Nevada.

(2) Beef carcass and beef wholesale cut prices applicable in Zone 1.

Subject to the provisions of paragraph (k) of this section, the Zone 1 price for each grade of each class of beef carcass and beef wholesale cut shall be the price specified therefor in paragraph (d) hereof (the applicable Zone 4 price) plus \$1.75 per cwt.

(2) Beef carcass and beef wholesale cut prices applicable in Zone 4.

Subject to the provisions of paragraph (k) the applicable zone prices for Zone 4 are as follows:

(All prices are on dollars per hundredweight bases; the price for any fraction of a hundredweight shall be reduced accordingly.)

Steer or Heifer	Choice or AA	Good or A	Commercial or B	Utility or C	Cuttier Canner or D	(Bologna Bulls (Equivalent cutter and canner grade
(i) Beef carcass or side.....	\$20.00	19.00	17.00	15.00	12.50	13.00
(ii) Hindquarter	22.25	21.00	18.25	15.75	12.50	13.00
(iii) Forequarter	18.00	17.25	16.00	14.50	12.50	13.00
(iv) Round	21.75	20.50	18.25	15.50		
(v) Trimmed full loin.....	29.00	27.25	22.50	19.25		
(vi) Flank	12.50	12.50	12.50	12.50		
(vii) Flank steak	23.00	23.00	23.00	23.00		
(viii) Short loin	32.00	29.75	24.75	21.50		
(ix) Sirloin	26.50	25.25	20.50	17.50		
(x) Cross cut chuck.....	18.00	17.25	15.75	14.25		
(xi) Regular chuck	19.50	18.25	17.00	15.00		
(xii) Brisket	15.75	15.75	13.75	13.75		
(xiii) Foreshank	11.50	11.50	11.50	11.50		
(xiv) Rib	23.50	22.25	20.50	18.00		
(xv) Short plate	13.50	13.50	12.75	12.75		
(xvi) Back	20.50	19.25	18.00	15.75		
(xviii) Triangle	17.25	16.50	15.25	14.00		
(xviii) Arm chuck	18.25	17.25	16.25	14.50		

The applicable zone 4 price of each cow carcass or wholesale cut of cutter and canner grade or utility grade shall be the same as the Zone 4 price of the carcass or corresponding wholesale cut of steer or heifer of the same grade; the applicable Zone 4 price of each cow carcass or wholesale cut of commercial grade, or good grade shall be the same as Zone 4 price of the carcass or corresponding wholesale cut of steer or heifer of commercial grade.

The applicable Zone 4 price of each stag carcass or wholesale cut of cutter and canner grade, utility grade, commercial grade or good grade shall be the same as the Zone 4 price of the carcass or corresponding wholesale cut of steer or heifer of the same grade.

The applicable Zone 4 price of each bull carcass or wholesale cut of utility grade or commercial grade shall be the same as the Zone 4 price of the carcass or corresponding wholesale cut of steer or heifer of the same grade. The applicable Zone 4 price of each bologna bull carcass and wholesale cut, which are equivalent to cutter and canner grade are specified above.

The applicable Zone price of each beef carcass or beef wholesale cut which has not been graded or identified by sex mark (required by paragraph (c) of Section 1364.411) when offered for sale, sold or delivered shall be the price of the lowest-priced carcass or corresponding wholesale cut.

(k) For any beef wholesale cut which has been mis-cut or for any piece or portion of beef which has been cut in a manner not authorized by this

Maximum Price Regulation No. 169, the zone price used for the determination of the maximum price shall be the applicable zone price of the lowest wholesale priced wholesale cut.

(o) (2) The fabricated beef cut zone areas 1 to 10 are identical to the beef zone areas set forth in Schedule I (1364.452).

(3) The applicable prices in Zone 1 for fabricated beef cuts and for ground beef and miscellaneous beef items shall be the prices specified in subparagraphs (4) or (5) or (6) hereof respectively (the applicable zone 3 and 4 price) plus the following: Zone 1...\$1.75.

(4) The fabricated beef cut prices applicable in Zone 3 and 4 for sales by a hotel supply house to purveyors of meals, subject to the provisions in paragraph (k) of Section 1364.452, substituting for the purpose of this paragraph (o) the term "fabricated beef cut" for the term "wholesale cut" contained therein, are as follows:

Grade

Fabricated Beef Cuts	Grade			
	Choice or AA	Good or A	Commercial or B	Utility or C
(i) Round, rump and shank off.....	\$30.00	\$28.75	\$24.75	\$20.50
(ii) Boneless rump (butt)	25.00	22.75	21.00	18.75
(iii) Hind shank	11.50	11.50	11.50	11.50
(iv) Boneless round	33.00	31.00	27.25	22.50
(v) Inside (top) round	36.75	34.25	29.75	24.25
(vi) Outside bottom round	36.75	34.25	29.75	24.25
(vii) Knuckle (face)	27.50	27.50	24.25	21.25
(viii) Gooseneck boneless round	32.50	29.75	26.50	24.75
(ix) Strip loin (bone in)	49.50	44.75	36.50	29.00
(x) Boneless strip	59.50	53.75	44.00	34.75
(xi) Trimmed full beef tenderloin	58.25	58.25	49.25	49.25
(xii) Trimmed sirloin tenderloin (butt tenderloin)....	58.25	58.25	49.25	49.25
(xiii) Trimmed tip tenderloin (short tenderloin).....	58.25	58.25	49.25	49.25
(xiv) Boneless sirloin (butt)	36.75	34.25	27.00	21.25
(xv) Top sirloin (butt)	45.75	44.00	35.75	26.25
(xvi) Bottom sirloin (butt)	30.25	27.25	20.75	17.75
(xvii) Boneless chuck	26.75	25.00	23.25	20.50
(xviii) Boneless chuck (shoulder clod out).....	26.00	24.25	22.75	19.75
(xix) Shoulder clod	29.00	27.75	25.75	23.00
(xx) Boneless briskets (deckle on).....	23.50	23.50	20.25	20.25

Grade

	Choice or AA	Good or A	Commercial or B	Utility or C
Fabricated Beef Cuts—(Continued)				
(xxi) Boneless briskets (deckle off).....	\$29.50	\$29.50	\$24.75	\$24.75
(xxii) Oven prepared rib	31.50	29.50	27.25	23.50
(xxiii) Rib short ribs, plate short ribs.....	21.00	21.00	19.25	19.25
(xxiv) Rib, boned, rolled and tied.....	39.25	37.00	34.00	29.50
(xxv) Spencer roll	(1)	(1)	41.50	35.75
(xxvi) Regular roll, (rib eye).....	(1)	(1)	64.50	54.25
(xxvii) Boneless short plate	20.00	20.00	19.00	19.00
(xxviii) Cube steak	22.50	22.50	22.50	22.50
(xxix) Flank steak, scored	25.00	25.00	25.00	25.00
(xxx) Club steaks, bone in	50.00	47.00	38.25	34.00
(xxxi) Boneless strip steaks	61.25	55.25	45.25	35.75
(xxxii) Porterhouse steaks (bone in).....	50.00	47.00	38.25	34.00
(xxxiii) T-bone steaks (bone in).....	50.00	47.00	38.25	34.00
(xxxiv) Boneless sirloin steaks	37.75	35.25	27.75	21.75
(xxxv) Top sirloin steaks	47.00	45.25	36.75	27.00

(1) This grade not permitted to be sold and/or delivered.

(5) The fabricated beef cut prices applicable in zones 3 and 4 for sales by packing or slaughtering plants, packing branch houses, wholesaler's or other selling establishments to purveyors of meals subject to the provisions in paragraph (k) of Section 1364.452, substituting for the purposes of this paragraph (o) the term "fabricated beef cut" for the term "wholesale cut" contained therein, are as follows:

Grade

	Choice or AA	Good or A	Commercial or B	Utility or C
Fabricated Beef Cuts				
(i) Round, rump and shank off.....	\$28.25	\$26.50	\$23.25	\$19.25
(ii) Boneless rump (butt)	22.75	20.50	19.25	17.00
(iii) Hind shank	11.50	11.50	11.50	11.50
(iv) Boneless round	30.50	28.50	25.00	20.75
(v) Inside (top) round	33.50	31.25	27.00	21.75
(vii) Outside (bottom) round	33.50	31.25	27.00	21.75
(vii) Knuckle (face)	26.00	26.00	23.00	20.50
(viii) Gooseneck boneless round	30.25	27.75	24.50	23.00
(ix) Strip loin (bone in)	46.00	41.50	34.50	28.00
(x) Boneless strip	55.25	49.75	41.50	33.50
(xi) Trimmed full beef tenderloin	54.00	54.00	45.00	45.00
(xii) Trimmed sirloin tenderloin (butt tender).....	54.00	54.00	45.00	45.00
(xiii) Timmed tip tenderloin (short tender).....	54.00	54.00	45.00	45.00
(xiv) Boneless sirloin (butt)	34.00	31.75	24.75	18.75
(xv) Bottom sirloin (butt)	28.50	26.25	19.75	16.25
(xvi) Top sirloin (butt)	41.75	39.25	31.75	22.25
(xvii) Boneless chuck	25.00	23.50	21.75	19.25
(xviii) Boneless chuck (shoulder elod out).....	24.00	22.50	21.00	18.50
(xix) Shoulder elod	28.00	26.50	24.75	22.00
(xx) Boneless brisket	22.00	22.00	18.75	18.75

Grade

Fabricated Beef Cuts—(Continued)	Grade			
	Choice or AA	Good or A	Commercial or B	Utility or C
(xxi) Boneless briskets (deckle off).....	\$27.25	\$27.25	\$23.00	\$23.00
(xxii) Oven prepared rib	29.50	27.50	25.50	22.00
(xxiii) Rib short ribs, plate short ribs.....	19.00	19.00	17.25	17.25
(xxiv) Rib, boned, rolled and tied.....	36.50	34.50	31.50	27.25
(xxv) Spencer roll	(1)	(1)	38.25	32.75
(xxvi) Regular roll, (rib eye).....	(1)	(1)	58.75	49.25
(xxvii) Boneless short plate	18.75	18.75	17.50	17.50
(xxviii) Cube steaks	21.50	21.50	21.50	21.50
(xxix) Flank steak, scored	23.00	23.00	23.00	23.00
(xxx) Club steaks, bone in	46.50	43.50	35.50	31.50
(xxxi) Boneless strip steaks	57.00	51.25	42.75	34.50
(xxxii) Porterhouse steaks (bone in)	46.50	43.50	35.50	31.50
(xxxiii) T-bone steaks (bone in).....	46.50	43.50	35.50	31.50
(xxxiv) Boneless sirloin steaks	35.00	32.75	25.50	19.25
(xxxv) Top sirloin steaks	43.00	40.50	32.75	23.00

(1) This grade not permitted to be sold and/or delivered.

Section 1364.453. Schedule II. Amounts which must be deducted from zone prices listed in Schedule I.

As hereinafter provided, the following shall be deducted from the applicable zone prices:

(a) For beef carcasses and beef wholesale cuts not graded by an official grader. For the sale of any beef carcass or beef wholesale cut which does not bear the grade mark and identification of an official grader of the United States Department of Agriculture at the time of sale, the seller shall deduct $12\frac{1}{2}$ per cwt. from the applicable zone price.

(b) Carload discount. For all beef carcasses and/or beef wholesale cuts and/or other meat items subject to this subpart B and Sections 1364.453 and 1364.454, delivered in a straight or mixed carload shipment or sold as a part of a straight or mixed carload sale, the seller shall deduct 25 cents per hundredweight from the applicable zone price.

Section 1364.454. Schedule III. Amounts which may be added to zone prices listed in Schedule I. Subject to the conditions hereinafter provided, the following may be added to the applicable zone price:

(a) For transportation and/or local delivery.

2) For transportation from the point at which the meat was slaughtered in price zone 1 to a distribution point located in the same price zone as the slaughter point, other than another slaughterer, packing or processing plant owned or controlled by the same seller, the seller may add the actual cost of transportation computed at the lowest common

carrier rate for the method of transportation used, but in no event more than 25 cents per cwt.

(3) For local delivery made within a radius of 25 miles from a slaughter plant, packing house, car-route unloading point, railroad unloading station or branch house, to the place of business of a seller at retail, wholesaler (not owned or controlled by the shipper or consignor), hotel supply house (not owned or controlled by the shipper or consignor), or commercial user, or the designated delivery point of a war procurement agency, or other governmental agency; or

For local delivery made within a radius of 25 miles from the place of business of a wholesaler or hotel supply house, to the place of business of a seller at retail, purveyor of meals, or commercial user, or the designated delivery point of a war procurement agency, or other government agency: the seller may add 25 cents per cwt.

(5) For local delivery made from a slaughter plant, packing house, car-route unloading point, railroad unloading station, or branch house, located in Price Zone 1, to the place of business of a seller at retail, wholesaler (not owned or controlled by the shipper or consignor), hotel supply house (not owned or controlled by the shipper or consignor), or commercial user, or the designated delivery point of a war procurement agency, or other government agency, located more than 25 miles from such shipping point; or

For local delivery made from the place of business of a wholesaler or hotel supply house located

in Price Zone 1 to the place of business of a seller at retail, purveyor of meals or commercial user, or the designated delivery point of a war procurement agency or other government agency, located more than 25 miles from such shipping point: the seller may add the actual cost of local delivery computed at the lowest common carrier rate for the method of delivery used, but in no event more than 50 cents per cwt.

(6) Notwithstanding any of the provisions of paragraphs (a) (1) to (a) (5), inclusive, of this Section 1364.454, nothing therein contained shall be construed to permit a total charge for transportation and/or local delivery from the point at which the meat was slaughtered to the place of business or receiving point of a retail seller, purveyor of meals, war procurement agency, or other governmental agency or commercial user of more than 50 cents per cwt. in Price Zone 1. The transportation and local delivery additions permitted in this paragraph (a) are on a hundredweight basis and the charge for transportation and/or local delivery for any fraction of a hundredweight shall be reduced accordingly. The additions specified in this paragraph (a) for transportation and/or local delivery may be charged: Provided, That the seller shall itemize separately on an invoice to the buyer the amount charged the buyer for transportation and/or local delivery, except that if such separate statement of transportation charges is prohibited by local law the seller shall maintain in his own record of the transaction a separate statement of any addition for

transportation or local delivery which is included in the maximum price charged.

(d) Wholesalers' selling addition.

On sales of any beef carcass or beef wholesale cut not obtained through custom slaughtering, a person who at the time of the sale is a wholesaler may add 75 cents per hundredweight to the applicable zone price: Provided, however, That on and after August 9, 1943, no person shall charge the addition permitted by this section 1364.454 (d) unless by such date such person shall have filed with the appropriate regional office of the Office of Price Administration a certified statement that the person: (1) is engaged in the business of buying beef carcasses and/or beef wholesale cuts for resale other than at retail; (2) does not own or control, in whole or in substantial part, any slaughtering plant or facilities and is not owned or controlled, in whole or in substantial part, by another person who owns or controls in substantial part any slaughtering plant or facilities; and (3) is not a hotel supply house or peddler truck seller within the meaning of this Revised Maximum Price Regulation No. 169.

(f) Boxing.

On sales to a seller at retail, purveyor of meals, war procurement agency, commercial user (not wholesaler, branch house, hotel supply house, etc.) war procurement agency, or other government agency, the seller may add 15c per cwt. for packing in boxes.

(g) Peddler-truck selling addition.

On a peddler truck sale involving delivery of not more than 100 pounds of beef in a total delivery of not more than 150 pounds of meats and meat products in any one day from such peddler-truck to any buyer's store door, a peddler may add to the prices specified in Section 1364.452 (Schedule I) the sum of \$1.25 per cwt. This addition shall be in lieu of any local delivery and/or transportation addition permitted in Section 1364.454.

Section 1364.455. Definitions applicable to beef.

(a) When used in this Revised Maximum Price Regulation No. 169 and when applicable to beef, the term:

(1) "Person" means any individual, corporation, partnership, association or other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any agency of any of the foregoing: Provided, That no punishment provided by this Revised Maximum Price Regulation No. 169 shall apply to the United States or to any such government, political subdivision, or agency.

(2) "Carload" means:

(ii) A shipment by motor truck or trucks to a single delivery point of fifteen thousand pounds or more of fresh or frozen wholesale meat cuts and/or cured meat cuts, meat or processed products and/or carcasses, or any combination of the foregoing, as a single bulk sale transaction; and

(iii) Any single bulk sale transaction wherein the buyer takes delivery at the seller's place of

business of fifteen thousand pounds or more of fresh or frozen wholesale meat cuts and/or cured meat cuts, meat or processed products and/or carcasses, or any combination of the foregoing.

(3) "Beef" means meat derived from the carcasses of bovine animals which does not qualify as veal as defined in Section 1364.470 (3) of this regulation.

(4) "Car-route unloading point" means any point on a car route at which a stop is made for the purpose of transferring meat to the possession of the buyer or to a truck for local delivery to the buyer.

(5) "Distribution point" includes a packing or slaughtering point, packer's branch house, wholesaler's or jobber's or hotel supply house's warehouse, car route unloading point, or railroad unloading station.

(6) "Local delivery means delivery by the seller otherwise than by rail, commencing at the seller's distribution point, or in the case of car routes, at the car unloading point and continuing to the buyer's place of business or other point of delivery.

(8) "Beef carcass" means and is limited to the dressed carcass side or sides of beef which shall be dressed with a first and second tail (caudal) vertebrae, kidney knob or knobs, and hanging tender left on. The beef carcass shall not be broken in any other manner than provided in paragraph (a) (9) of this Section 1364.455.

(9) "Beef wholesale cut" means and is limited to any of the following cuts meeting the following minimum specifications, derived from the beef car-

cass but excluding the offal and any item not included herein (all measurements prescribed herein shall be made with a rigid straight ruler. All cuts shall be made according to the definite guides and measurements specified. Ribs are designated as first to thirteenth, inclusive, counting as the first rib the one which is nearest the neck end of the side.)

(i) "Hind quarter" means the posterior portion of the side remaining after the severance of the twelfth rib forequarter from the side and comprising the round, full loin, including the thirteenth rib, flank, kidney and hanging tender all in one piece, which posterior portion shall be obtained by cutting the beef side between the twelfth and thirteenth ribs, keeping the knife firmly against the twelfth rib while cutting the length of the rib to the point at the end of the rib where the rib joins the rib (costal) cartilage, from which point passing through the cartilage and meat of the flank and short plate in the same straight line, completing the cut.

(ii) "Forequarter" means the anterior portion of the side remaining after the severance of the one-rib hind quarter from the side and comprising the rib, regular chuck, brisket, short plate and foreshank all in one piece, which anterior portion contains the first to the twelfth rib, inclusive. All heart (mediastinal) fat, but no other fat, shall be removed from the forequarter. The skirt (diaphragm) shall not be removed from any cut or part of the forequarter to which it is attached.

(13) "Wholesaler" means a person other than a hotel, supply house or peddler-truck seller who

buys beef carcasses and/or beef wholesale cuts for resale other than at retail and who does not own or control, in whole or in substantial part, any slaughtering plant or facilities and is not owned or controlled, in whole or in part, by another person who owns or controls in substantial part any slaughtering plant or facilities.

(14) "Sales at retail" means sales to the ultimate consumer: Provided, That no wholesaler, processor, packer, slaughterer, branch house, car route, hotel supply house, purchaser for retail, commercial user, purveyor of meals, war procurement agency, or other government agency, shall be deemed to be an ultimate consumer, except that a sale to a purveyor of meals on usual terms by a retailer, at least eighty percent of whose sales of meat during the preceding calendar month were made to ultimate consumers, shall be deemed a sale at retail.

(15) "Peddler-truck sale" means a sale of beef from a truck by a person who purchases beef at or below the maximum price from a seller with whom he has no other financial affiliation or relationship, who takes a delivery at the seller's place of business, and who does not sell or deal in meat in any manner other than sales out of stock carried in a truck, owned and driven by him; provided, that the first record of the transaction is made by the salesman concurrently with the delivery of the products sold.

(b) (2) "Purveyor of meals" means:

(i) Any restaurant or hotel, cafe, cafeteria or other establishment which purchases meats and

where meals, food portions or refreshments are served for a consideration.

ASSIGNMENT OF ERROR No. 30

The court erred in refusing to give the following defendant's proposed and offered instruction to which refusal the defendant within the time and in the manner prescribed by law duly excepted.

DEFENDANT'S REQUESTED INSTRUCTION No. 24

You are instructed that if you find as a fact that the Revised Maximum Price Regulation No. 169 heretofore read to you, is so framed, worded, drawn and set forth as to be incomprehensible or unintelligible to a person of ordinary understanding and intelligence, then you must find the defendant not guilty of violating the provisions of said Maximum Price Regulation No. 169.

ASSIGNMENT OF ERROR No. 31

The court erred in refusing to give the following defendant's proposed and offered instruction to which refusal the defendant within the time and in the manner prescribed by law duly excepted.

DEFENDANT'S REQUESTED INSTRUCTION No. 25

You are instructed that if you find Revised Maximum Price Regulation No. 169 so ambiguous, indefinite, uncertain and unintelligible that it can-

not be understood or comprehended with a reasonable degree of certainty by a person of ordinary intelligence and understanding, you must find the defendant not guilty.

ASSIGNMENT OF ERROR No. 32

The court erred in refusing to give the following defendant's proposed and offered instruction to which the defendant within the time and in the manner prescribed duly excepted.

DEFENDANT'S REQUESTED INSTRUCTION No. 32

You are instructed that if you find from the evidence that the defendant did not make the sales charged in the information, you must find the defendant not guilty.

ASSIGNMENT OF ERROR No. 33

The Court erred in refusing to give the following defendant's proposed and offered instruction to which refusal the defendant within the time and in the manner prescribed by law duly excepted.

DEFENDANT'S REQUESTED INSTRUCTION No. 35

You are instructed that if you are unable to determine from the evidence the maximum prices permitted by Maximum Price Regulation No. 148, 169 and 239 for the grade, type and kind of beef, pork and lamb, charged to have been sold by defendant, or if there is a reasonable doubt in your

mind as to what were the maximum prices permitted therefor by such regulation on the date of each sale defendant is charged to have made, you must find the defendant not guilty.

ASSIGNMENT OF ERROR No. 34

The court erred in refusing to give the following defendant's proposed and offered instruction to which refusal the defendant within the time and in the manner prescribed by law duly excepted.

DEFENDANT'S REQUESTED INSTRUCTION No. 36

If you find from the evidence that no maximum price has been established by Revised Maximum Price Regulation No. 169 for the type or kind or grade of beef carcasses or wholesale cuts alleged, which defendant may have sold or delivered, if any, you are instructed that you must find the defendant not guilty of violating Revised Maximum Price Regulation No. 169.

ASSIGNMENT OF ERROR No. 35

The court erred in refusing to give the following defendant's proposed and offered instruction to which refusal the defendant within the time and in the manner prescribed by law duly excepted.

DEFENDANT'S PROPOSED INSTRUCTION No. 39

If, after a consideration of the whole case, any juror shall entertain a reasonable doubt of the

guilt of the defendant, it is the duty of such juror so entertaining such reasonable doubt to vote for a verdict of "not guilty".

The defendant is presumed to be innocent until proven guilty; that presumption accompanies him throughout the trial; it goes with you to your retirement to consider your verdict and operates until you have arrived at a verdict. This presumption will avail to acquit the defendant unless it be overcome by sufficient proof of his guilt to convince you, and each of you, to a moral certainty and beyond all reasonable doubt of his guilt. You must examine the evidence in the light of presumption of innocence, and unless you find the evidence sufficiently strong to overcome this presumption, and, further, to satisfy you beyond all reasonable doubt of the guilt of the defendant, he is entitled to a verdict of acquittal at your hands.

CONCLUSION

Wherefore, the said Defendant, Clarence O. Flannagan, by reason of the errors aforesaid, prays that the said judgment and sentence against and upon him, may be reversed and held for naugh.

CANTILLON & GLOVER

By JOHN E. GLOVER

Attorneys for Defendant and
Appellant, Clarence O.
Flannagan.

Received copy of the within Assignment of Errors this 20th day of January 1944.

CHARLES H. CARR,
U. S. Attorney
By MARY WENTWORTH

[Endorsed]: Filed Jan. 20, 1944.

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Be it remembered that on the 15th day of July, 1943, an Information was filed in the above entitled Court.

That on the 21st day of July, 1943, and before the entry of a plea, the Defendant filed a Demurrer to said Information and to each Count thereof, and on the 30th day of September, 1943, an Order was made sustaining said Demurrer and granting the Government leave to file an Amended Information within ten days.

That on the 11th day of October, 1943, an Amended Information was filed.

That on the 16th day of October, 1943, Defendant served and filed a Notice of Motion to Quash and Set Aside said Amended Information.

That on the 16th day of October, 1943, and before the entry of a plea, the Defendant filed a Demurrer to said Amended Information, basing said Demurrer upon the following grounds:

(a) That Count X of said Amended Informa-

tion fails to state facts sufficient to constitute a criminal offense;

(b) That Count X of the Amended Information is uncertain in that it cannot be determined therefrom:

1. What crime, if any, Defendant is alleged to have committed;

2. Whether the sale of the beef alleged to have been sold by Defendant was made by Defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer", or otherwise;

3. Whether the sale alleged to have been made by Defendant was made to a wholesaler, retailer, purveyor of meals or otherwise;

4. In what respects, if any, the purported crime attempted to be alleged in said Count X differs from the purported crimes attempted to be alleged in Counts I, II, III, IV, V, VI, VII, IX and XII of said Amended Information;

(c) That Count X of the Amended Information is indefinite in each and all of the respects in which it is heretofore set forth to be uncertain;

(d) That Count X of said amended Information is ambiguous in each and all of the respects in which it is heretofore set forth to be uncertain and indefinite.

That on the 18th day of October, 1943, Defendant, in open court, pursuant to the aforementioned Notice of Motion to Quash and Set Aside said Amended Information, and arguments on said Motion having been presented by both Defendant and

the Government, the Court made and entered its order denying said Motion, to which Order the Defendant duly excepted.

That on the 18th day of October, 1943, argument was had on the said Demurrer, and the Court made and entered an Order overruling said Demurrer, to which Order the Defendant duly excepted. [2*]

That on the 23rd day of October, 1943, Defendant served and filed his Notice of Motion for an Order directing the Government to serve and file a Bill of Particulars, specifying the following findings relative to Count X (other Counts are omitted as said Count is the only Count upon which judgment and sentence was pronounced):

(a) What grade of beef Defendant is alleged to have sold, and whether such beef was a "beef carcass" or a beef cut, or beef cuts, and if a beef cut, or beef cuts, the kind or type of cut or cuts;

(b) What the maximum price is, was or is claimed to be, or have been, for the beef alleged to have been sold by Defendant;

(c) Whether the sale of the beef alleged to have been sold by Defendant was made by Defendant as a "wholesaler", "peddler truck sale", "independent wholesaler", "hotel supply house", "slaughterer", "packer", or otherwise.

That on the 1st day of November, 1943, pursuant to said Notice of Motion for Bill of Particulars, said Motion was made and heard, which Motion was by the Court denied, and the Defendant duly excepted to the Court's ruling thereon.

*Page numbering appearing at foot of page of original Bill of Exceptions.

That on the 18th day of October, 1943, Defendant entered his plea of not guilty to each and every Count of said Information.

That said cause came on regularly for trial on the 9th day of November, 1943, the Honorable Paul J. McCormick, Judge presiding, with a jury, the United States of America being represented by Ernest A. Tolin, Esq., Assistant United States Attorney, and the Defendant being represented by William Katz, Esq.

Before the selection of a jury had commenced and outside of the hearing of the jury veniremen, the Government moved the Court to dismiss Counts I, II, III, IV, V, VI, VII and IX, which Motion was then and there granted and the trial was ordered to proceed on Counts VIII, X, XI and XII, and by reason of acquittals [3] on Counts VIII, XI and XII, the charge contained in Count X is the only matter involved in this appeal.

That the jury was duly impanelled and sworn, after which the following proceedings were had:

JAMES KILDUFF

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

I live at Anaheim, California. On the 24th, 25th and 28th days of June, 1943, I was in the retail meat business in the Greater Anaheim Market in Anaheim, under the name of Kilduff's Quality

(Testimony of James Kilduff.)

Meats. I purchased meat and resold it to the consuming public. I first met the defendant two or three years ago but he did not supply me with meat prior to June 24, 1943. On June 24, 1943, I had a conversation with Mr. Flannagan at my market.

“Q. Tell us what you said and what he said about it, if you recall.

Mr. Katz: Objected to as incompetent, irrelevant, and has no bearing on the issues; no foundation; no corpus delicti has been established.

The Court: Overruled. You may answer the question.

Mr. Katz: Note an exception, please.”

He said that he heard I wanted some meat and said he could supply me a little but probably not all I needed and said there was an overage. He did not tell what it was for. I bought some meat. He had a truck there at the time, it was in the alley, I went out and saw it. I couldn't see whether there was any sign on the truck. I was looking at the meat, I saw the meat in the truck. Government Exhibit No. 1, for identification, is an invoice Mr. Flannagan [4] gave me at that time. When I made the purchase Mr. Flannagan carried the meat in and put it in the ice box. It was at that time that the invoice, Government Exhibit No. 1, for identification, was given me. That is the invoice on the meat of that day; I received the meat that is listed on the invoice. I paid Mr. Flannagan the price that appears on that invoice. There

(Testimony of James Kilduff.)

wasn't much of anything said, only he told me how much other in cash I owed, that was for him. I don't remember how much I gave him on that invoice but it figured out about 7c a pound on the beef.

“Mr. Katz: Just a minute. If the Court please, I move to strike that last portion of the statement as not responsive to the question; as a conclusion of the witness; irrelevant, incompetent and immaterial.

The Court: Motion denied.”

I paid him some money at that time; I gave him a check at that time; I gave him some money over and above the amount of the check. I suppose the amount of the check is the amount of the invoice; I don't remember. I had not made any purchase of meat from him prior to that time. This transaction of the 24th of June, 1943, was the first transaction of a business nature I had ever had with defendant Flannagan.

“Mr. Tolin: I offer in evidence Government's Exhibit 1, for identification.

Mr. Katz: Objected to, if the Court please. There is no foundation laid for it; incompetent, irrelevant and immaterial; it has no bearing on the issues in this case.

The Court: Overruled. [5]

The Clerk: Government's 1, in evidence.

Mr. Katz: Exception, if the Court please.

(The document referred to, heretofore marked as Government's Exhibit 1, for identification, was received in evidence.)”

PHONE NEWPORT BEACH 1790

Newport Heights, Calif.

194.3

Sold to

Kilduff Mkt N^o 7801

DESCRIPTION	WEIGHT	PRICE LB.	AMOUNT
1. <i>livers</i>	<i>118</i>	<i>98%</i>	<i>26 1/2</i>
2. <i>(A) 15468</i>	<i>610</i>	<i>22 1/2</i>	<i>135 73</i>
3.	<i>1196</i>		
4.			<i>130 25</i>
5.			<i>130</i>
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
<i>Signed</i>		TOTAL	
SIGNED			

No. 16107 EV
42
V3.
Flammagan
42 EXHIBIT
F. 1 16107
F. 2 119.1043
F. 3 119.1043 Clerk:
F. 4 119.1043 Deputy Clerk

ADMITTED

(Testimony of James Kilduff.)

“Mr. Katz: Just a moment, counsel, if I may. If the Court please, counsel for the Government is going into a transaction on the 25th, and has offered in evidence—on the 24th, and has offered in evidence an invoice of the 24th, and there is no offense charged in this Information, there is no such thing before this Court pertaining to any offense committed on the 24th day of June, 1943.

The Court: Mr. Katz, you haven’t been in the courtroom, recently, I think. You must not argue matters before the Court.

Mr. Katz: I don’t. It isn’t a matter of argument; it is a motion, if the Court please, to strike all that has gone in. I merely make the motion to strike it out on the ground that the matters now gone into on the 24th are not charged in any information in the complaint.

The Court: You haven’t made that motion until now.

Mr. Katz: Yes, your Honor. I meant to.

The Court: The motion is denied.”

On that occasion I had a conversation with the defendant, Mr. Flanagan, about future deliveries of meat to my market. I said if he could to bring me another beef the next day. I saw him on the next day, that is on the 25th day of June of this year at my market, he just brought the beef in. I received an invoice, Government’s Exhibit No. 2, for identification, from him at that time; I also received from him the [6] items that are listed on that invoice.

(Testimony of James Kilduff.)

He carried the items into my place of business. I paid him the amount that appears on that invoice. Government's Exhibit No. 3, for identification, is the check on that invoice. After I wrote the check, Government's Exhibit No. 3, for identification, I gave it to Mr. Flannagan. As to whether I gave him anything else at that time my answer is that I gave him some money. There was nothing said by him or by me as to the sum that I gave him at that time. I gave him Government's Exhibit No. 3, for identification. He did not do any calculating in my presence; the way I determined how much money to give him other than the amount that appears on the check was that he told me how much. I do not remember the amount of money nor the approximate amount of money. I don't remember how it figured out in money. Mr. Flannagan did not give me any memorandum at the time. No one else was present. Government's Exhibit No. 3, for identification, was offered and received in evidence.

ADMITTED

Handwritten receipt or invoice with fields for date, time, and amount. The date is 6/11/53, and the amount is \$132.00. The name "Henderson" is written in the "TO" field.

Bank of America stamp with fields for date, time, and amount. The date is JUN 12 1953, and the amount is \$132.00. The name "Henderson" is written in the "TO" field.

GREATER ANAHEIM MARKET

MEAT DEPARTMENT

820 E. CENTER STREET ANAHEIM

No 4656

ANAHEIM, CALIF. 6 - 25 1953

TO THE ORDER OF

West Coast Meat

\$132

72

One Hundred Thirty Two

72/100

DOLLARS

90-369 ANAHEIM BRANCH 90-569

BARBARA OR JAMES R. KILDUFF

Bank of America

NATIONAL TRUST ASSOCIATION
ANAHEIM, CALIFORNIA

BY

James R. Kilduff

(Testimony of James Kilduff.)

I obtained Government's Exhibit No. 2, for identification, from Mr. Flannagan. As to item one on that Exhibit No. 2, for identification, I received ox tails; as to item 2 of that Exhibit, I received brains; as to item 3, I received four hearts; as to item 5 on that Exhibit, I received tongue; as to item 6, which appears in a circle, I received a whole beef. I didn't receive a half, I received that item 6, the steer, from Mr. Flannagan.

Government's Exhibit No. 2, for identification, was then offered in evidence with a request that the Clerk cover the back part of it with a piece of paper [7] so that the back part would not come to the attention of the jury. Government's Exhibit No. 2, for identification, was then received in evidence. (The Clerk covered the back of the Exhibit so that it was then in the condition, it is in now.)

WEST COAST MEAT COMPANY

PHONE NEWPORT BEACH 1790

Newport Heights, Calif.,

1943

Sold to

No 7809

DESCRIPTION	WEIGHT	PRICE LB.	AMOUNT
1. Pork 1	✓ 6 ⁰⁰	15	70
2. Bacon 2	7 3 ⁴⁰	10 ⁰⁰	39
3. Ham 4	26 6 ⁷⁰	18 ⁰⁰	119
4. Liver 5	54 10 ⁰⁰	26 ⁰⁰	280
5. Tongue 5	✓ 8 ⁷⁰	25 ⁰⁰	215
6. 1/2 St 6.8	3836 56 ⁰⁰	22 ⁰⁰	125 49
7.	3970		
8.			
9.			
10.			13212
11.			
12.			
13.			
14.			
15.			
TOTAL			

NO 6107 Ex.
11/11
Hansen
2 1/2
11/11 1943
M. Hansen

ADMITTED

(Testimony of James Kilduff.)

At that time I asked Mr. Flannagan if he could bring me another beef Monday. The Monday to which I refer was the 28th of June. I saw the defendant on that occasion at my market; just he and I were present. On that occasion, the 28th of June, I received from defendant the beef that is described on Government's Exhibit No. 4, for identification, which is the invoice the defendant gave me at the time that sale was made. Mr. Flannagan delivered the meat and carried it to my place of business from the truck. He gave me the invoice after he carried the meet in as part of the same transaction. I actually received the beef that appears on the invoice as item 1. I gave Mr. Flannagan a check at that time. Government's Exhibit No. 5, for identification, is that check. I gave him something else at that time; I don't know how much it was. I don't remember how it figured out. He didn't say anything, I just gave it to him. I don't remember the approximate amount, I can't remember numbers that long.

"Mr. Tolin: I offer in evidence Government's Exhibits 4 and 5, for identification.

Mr. Katz: Objected to, if the Court please; incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Katz: Exception.

The Clerk: Government's Exhibits 4 and 5 in evidence. [8]

(The document referred to, heretofore marked as Government's Exhibits 4 and 5, for identification, were received in evidence.)"

WEST COAST MEAT COMPANY

PHONE NEWPORT BEACH 1790

Newport Heights, Calif., 6/28 1943

Sold to K. J. Duffie Mkt No 7819

DESCRIPTION	WEIGHT	PRICE LB.	AMOUNT
1. <u>1 Bonf 6.8</u>	<u>425</u>	<u>20 1/2</u>	<u>86 07</u>
2. <u>2890</u>			
3.			
4.			
5. <u>2 1/3</u>			
6. <u>20 1/4</u>			
7. <u>172 60</u>			
8. <u>53</u>			
9. <u>173 13</u>			
10.			
11.			
12.			
13.			
14.			
15.			
TOTAL			

No. 16107 Ev.
US
 vs.
Rannagan
US
 No. 4
 Filed 11/9/43
M. H. Hansen

ADMITTED

ADMITTED

216
11/18/59
GA
CN

WEST COAST MEAT CO.

[illegible]

GREATER ANAHEIM MARKET

MEAT DEPARTMENT

329 E. CENTER STREET

ANAHEIM

ANAHEIM, CALIF

Nº 4658

PAY TO THE
ORDER OF

PAY TO THE ORDER OF West Coast Meat Co.

\$ 86

DOLLARS

90-369 ANAHEIM BRANCH 90-369

BARBARA OR JAMES R. KILDUFF

Bank of America

NATIONAL TRUST AND SAVINGS ASSOCIATION
ANAHEIM, CALIFORNIA

RY

BY James R. Fildes

(Testimony of James Kilduff.)

“Mr. Tolin: May I now pass to the jury Exhibits 2 and 3?

The Court: Has that been properly protected?

Mr. Tolin: Yes, Your Honor. Exhibit No. 2 now has the back portion thereof covered with paper.

The Court: You have seen that, have you, Mr. Katz?

Mr. Katz: I haven't since it has been covered.

Mr. Tolin: I will show it to you now, Mr. Katz.

The Court: You may show it to the jury.”

I had a conversation with someone from the Office of Price Administration on or about the 28th of June, this year.

“Q. At that time did you give a statement to that person? A. Yes.

Mr. Katz: Objected to, if the Court please. It is incompetent, irrelevant and immaterial and calls for hearsay, matters that have no bearing on any issue in this case, if the Court please.

Mr. Tolin: May I explain, your Honor? It is a preliminary question.

The Court: Very well. Overruled.

Q. By Mr. Tolin: Mr. Kilduff, I am showing you now a two-page memorandum of some sort written in ink on yellow paper. Will you look that over and see if it refreshes your memory on any subject that I have asked you about here this morning? [9]

Mr. Katz: If the Court please, I am going to object to that as incompetent, irrelevant and imma-

(Testimony of James Kilduff.)

terial; that counsel cannot impeach his own witness. This witness is a Government's witness. It is leading and suggestive. I know that it is proper, if the Court please, for a witness to refresh his memory if he cannot recall an independent fact; but to utilize this method of impeaching—and that is what it amounts to—one's own witness, I think it is improper, and I make my motion on that ground, if the Court please.

The Court: May I see that? I don't know what it is.

Mr. Katz: I haven't seen it either.

The Court: Show it to counsel.

Mr. Tolin: Let me say the purpose is not impeachment, but to refresh his memory.

Your Honor, would it be, perhaps, appropriate to have it marked for identification? And I will take it from the file which contains other matters.

The Clerk: Government's Exhibit 6, for identification. (Attached hereto on following page.)

(The document referred to was marked Government's Exhibit No. 6, for identification.)

6/28/43

This is a statement of J. R. Kibuff, owner of the Greater Anaheim market located at 225 E. Center St. Anaheim. This statement is given willingly because I wish to help in clearing up a black market operation in meats.

Because the Manning Parking Co. closed up, I was unable to buy any fresh meat for my butcher shop. I was told by another butcher that I could buy meat from the West Coast Meat Co. of Milpitas Heights Calif. if I was prepared to pay over and above the correct selling price.

On June 25th 1943 a man drove up in the back of my market in a green panel truck, there was no name on this truck. The man had some meat in this truck, I purchased 564 pounds of Grade A. meat on this date. The total amount of the invoice for all meats purchased on this

Page two

date 1000 \$132.72. I paid this amount by check, then I paid the driver a bonus, or side money of 79 a pound extra for the 564 pounds of beef. I paid him in cash for this the amount. It come to a total of \$39⁴⁸/₁₀₀. I also purchased 425# of Grade B Beef on June 28th - 1943. I paid this in cash \$78.19. amount of \$86⁰⁷/₁₀₀ in check then I paid the same driver \$29⁷⁵/₁₀₀ in cash.

The meat in both these cases were suspected meat - the last purchase of meat was stamped with inspection stamp # 359.

This statement consists of two pages, I hereby certify that all of this is true to my best knowledge. I have read both pages. It is understood by me, that this statement is to be treated confidentially until such time as it may be necessary to appear in court.

E. C. Gorman
Witness

James R. Kilduff
Owner meat dept

Patricia

(Testimony of James Kilduff.)

The Court: The Court has inspected the document. Is there a question pending?

(The question was read.)

The Court: Overruled.

Mr. Katz: May I take the witness on voir dire with respect to making that memorandum?

The Court: No, there is nothing yet to take him on, Mr. Katz. There is nothing before the jury so far as that is concerned, excepting his statement that it [9A] does refresh his recollection.

Q. By Mr. Tolin: For the purpose of the record I now show this to you again, and it is now marked as Exhibit 6, for identification. Did you answer the question, Mr. Kilduff? Will you do so?

Mr. Tolin: Will you read it, Mr. Reporter, so he will have it?

(The question was re-read.)

The Court: When you have done so, answer the question categorically, Mr. Kilduff, yes or no.

The Witness: Yes.

Q. By Mr. Tolin: Is your memory now refreshed, Mr. Kilduff, as to the amount that you paid to Mr. Flannagan in addition to the check that you gave him on the 25th day of June of 1943?

A. Well, just what it says there.

Q. Tell us.

Mr. Katz: Just a moment, if the Court please. I will object to what it says on the paper.

The Court: Yes, that will go out, gentlemen. You disregard it.

(Testimony of James Kilduff.)

Q. By Mr. Tolin: Tell us how much you paid him over and above the amount of the check that you gave him on the 25th of June.

Mr. Katz: Objected to, if the Court please; incompetent, irrelevant and immaterial. It has already been asked and answered.

The Court: Overruled.

Mr. Katz: Exception noted.

The Witness: \$39.48.

Q. By Mr. Tolin: Is your memory now refreshed, Mr. Kilduff, as to the amount you paid him on the 28th day of June, 1943, over and above the amount of the check? [9B]

A. It is on there. \$29.75.

Mr. Katz: Just a minute, if the Court please. I will move to strike for the purpose of the objection.

The Court: That may go out. Disregard it, gentlemen.

Q. By Mr. Tolin: Mr. Kilduff, is your memory now refreshed as to the amount that you paid over and above the amount of the check on the 28th of June, 1943? Please tell us yes or no.

A. Yes.

Q. What amount did you pay over and above the amount of the check on that date; that is to say, on the 28th day of June, 1943? A. \$29.75.

Q. What is this that I have shown you here, Exhibit 6, for identification?

A. The statement that I gave on that day.

Q. To whom?

Mr. Katz: Objected to, if the Court please; in-

(Testimony of James Kilduff.)

competent, irrelevant and immaterial. The statement is hearsay.

The Court: Sustained.

Q. By Mr. Tolin: What was the date on which you gave this statement?

A. 28th of June.

Cross-Examination

By Mr. Katz:

I have been in the retail meat business in Anaheim, California, for nine years. I became acquainted with the defendant Flannagan about three years ago but did not transact business with him then. Prior to the 24th of June, I had called a party to tell him to have Flannagan come to see me. Mr. Flannagan did not come to see me prior to the time I had gotten in touch with someone and asked to have Flannagan come to see me. Mr. Flannagan did not solicit my business. My meat supplier was out of business at that [9C] time. I was left without meat. Mr. Flannagan came to see me at my invitation on June 24, 1943. At that time I explained my predicament to him. I asked him to help me out. At that time I had no meat at all. I asked him to please spare me some off his truck if he could, if he had something to sell. He told me that in order to do so he would have to take it from some other customer, that everything he had on the truck that particular day had been ordered and he was making his deliveries; that if he helped me out he would have to take it away from some other customer. Mr. Flannagan told me that it would

(Testimony of James Kilduff.)

cost me more to buy meat from him than it would cost me if I went down and got it from the packing house. He told me that there were certain additional charges that he would make and that he could make by reason of the fact that he delivered his meat. As to whether he told me that he was entitled to certain charges over and above what I would have to pay if I went down and got it from the packing house because of the different status or that he was permitted to add on because of the way he transacted his business, my answer is that I think he said about that. I was interested in the meat. I don't remember. I wasn't concerned so much with what he told me about prices as I was in getting the meat that he would supply to me, that different charges could be made for the same meat. He told me that if I would go down to the packer and get the same thing that it would cost less than he would charge me. He told me that if there was any way for me to get it from the packer I should do it. We did not discuss the individual prices of the items listed on the invoice. I paid the invoice of June 24, Government's Exhibit No. 1. As to whether the check was for the sum of \$138.25, my answer is that it was. That is the amount [10] that is the total of the items, that is shown on the invoice of June 24. At the time Mr. Flannagan received the check he marked the invoice paid and handed it back to me. As to whether I recall in addition to giving Mr. Flannagan the check whether I gave him any cash or other consideration, my answer is yes.

(Testimony of James Kilduff.)

I recall it from my own recollection and memory. I don't know how much it was. I have no way of knowing what it was, except my recollection. Mr. Flannagan did not tell me that additional sums I would be required to pay were reflected in the invoice. He told me he would do the best he could to help me out. He told me he would try to get as much meat for me as he could and on the following day would come with a delivery and on that day he brought me the items shown on the invoice marked Government's Exhibit No. 2. I received all of those items. I did not discuss the individual prices with Mr. Flannagan. I paid for that shipment of June 25 by the check which is marked as Government's Exhibit No. 3. When Mr. Flannagan presented me with the invoice I wrote out the check for the amount shown on the invoice and handed it to Mr. Flannagan. At that time I handed Mr. Flannagan the other consideration but I don't recall the amount; I can't recall the amount that long ago. I don't know whether the additional amount was for any particular item on the invoice. I don't know what it was for. Mr. Flannagan told me that he would have to select the meat for me; he didn't tell me where he obtained his merchandise. I didn't know how he operated. Item 6 on Government's Exhibit No. 2, the invoice of June 25, refers to a Grade A, one-half steer beef, but as a matter of fact on that date I received an entire carcass of [11] beef, the one-half must have been an error, but I didn't receive any additional meat in weight. The

(Testimony of James Kilduff.)

weight there is right, only this should have been one beef instead of half a beef. The beef weighed 564 pounds.

Concerning the invoice of June 28th, Government's Exhibit No. 3, I received only one item, namely, one steer. I gave a check for the amount shown on the invoice and an additional sum, the amount of which I cannot recall and I don't know what the additional sum was for. I was visited by two Office of Price Administration investigators on June 28, 1943. I have not been charged with violation of any Office of Price Administration regulation, nor have I been told that I was violating any regulation in the operation of my business. Upon receiving the beef I broke it up into items and put it in my case, and as soon as I could marked the item with price and grade.

Concerning Exhibit No. 6, for identification, the following proceedings were had:

“Q. Now, Mr. Kilduff, you were shown a statement to refresh your recollection, and then made certain statements after having read it. Isn't it true that your testimony with reference to the amounts that you then gave were given entirely from the memorandum, that you had no recollection of those amounts?

A. The only recollection I have is how much a pound it was. I don't have how much it figured out. I have the round figure in my mind of how much a pound it was on the beef.

Q. And even after reading this statement you

(Testimony of James Kilduff.)

do not at this time know what the amounts were that [12] you state that you gave Mr. Flannagan?

A. Well, there was two of them there, and I don't remember just what they were, no sir.

Q. You still don't remember? A. No, sir.

Q. And the statement that Mr. Tolin showed you did not refresh your recollection as to what those amounts were?

A. Well, they did when I read it. But I can't remember them right now. I remember the 7 cents.

Q. When you read it, Mr. Kilduff, you merely read the figures shown on the statement, is that right? A. That's right."

"Q. Were you told by the O.P.A. investigators that you were violating the regulations in not having price and grade on your merchandise in your cases?

Mr. Tolin: To which we object as irrelevant and immaterial.

The Court: Sustained."

A. No charges have been filed against me. I do not have any agreement with the United States Attorney relative to not filing charges. I have not talked to anybody in Anaheim about the transaction.

"Q. Did you ever talk to anyone at your home about it?

Mr. Tolin: Objected to as irrelevant and immaterial.

The Court: Sustained."

ROLAND H. RICHARDS

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows: [13]

I live in Anaheim; I have a retail meat market located at 400 Los Angeles Street in Anaheim. I am in charge of it part of the time and when I am not there Mr. Smith, my helper, has charge. I was the operator of that market on the 3rd of June, 1943. I wasn't there that particular day. I know Mr. Flannagan. I sell regular meat products in that market, beef, pork and veal; it is a retail market. Retail and a very little restaurant; I don't operate a restaurant there. Between the 28th and the 25th of July and the first of July, 1943, I had a conversation in my market with Mr. Flannagan, the defendant, about the amounts he had charged me for beef products. He came and said, "I understand you are short of beef."

I said "Am I short of beef? I sure am. I just can't get any meats at all. I sure would like to satisfy these people here. I have been in business here a long time, and anything you can do for me I sure would appreciate it."

He said, "Well, I can let you have meat, but it is going to cost you a little *coverage*."

I said, "What do you mean by that, Mr. Flannagan?"

He said, "Well, I will have to select your beef and I will have to truck it down here for you and, of course, that is going to cost some overage." I

(Testimony of Roland H. Richards.)

didn't ask him the amount or anything like that. I said, "O. K." "I will be glad to have the beef."

I told him to bring me some. We didn't make a purchase from him that particular day that I remember of.

The Government had marked for identification, the following Exhibits: [14]

Exhibit No. 9, invoice dated June 3, 1943;

Exhibit No. 10, a check dated June 3, 1943;

By the Witness:

I bought the meat listed on Government's Exhibit No. 9 for identification, from the defendant Mr. Flannagan. I wasn't there when it was delivered. Mr. Smith, who is in the back of the room here, was there. He worked for me and he was the manager of the market during the times when I wasn't there. I had signed a check, which I recognize as Government's Exhibit No. 10, for identification. It was not written out at the time I signed it. I signed it in blank; just my signature, Rich's Market, and left it for him to pay for the meat if it happened to come that day. We didn't know whether we would get it or not. We just had the gentleman's promise. I didn't know at the time I signed the check what amount would be written in. As to whether I ever paid Mr. Flannagan any money for the meat which appears in Government's Exhibit No. 9, for identification, other than the amount that appears on Government's Exhibit No.

(Testimony of Roland H. Richards.)

10, for identification, my answer is that I don't remember; I wasn't there that day. I may have later in the week, I can't recollect. I purchased other meat from the defendant Flannagan after that and was present when some of that meat was delivered.

“Q. When was the first time that that occurred, telling us as nearly as you can?”

Mr. Katz: If the Court please, may I at this time interpose an objection to going into any transactions other than the transaction that is specified in the count in the information, if the Court please, as to this matter is Count 8; and we object to going into [15] other transactions other than the one before the Court.

The Court: I think evidence of system is admissible. Overruled.

Mr. Katz: Exception.

The Court: Answer the question, please.

The Witness: I can't say exactly.”

I imagine it was within the next week, I can't state the day, just Mr. Flannagan and myself were there. Mr. Smith was there but wasn't around with Mr. Flannagan and I at the particular time. On that occasion I was presented an invoice by the defendant. All that was said then was that the meat was brought in and he received his money and that is all there was to it. Whatever the invoice come to that is what he got. As to whether I paid him some overcharge. I did down through the first time that we dealt. As to when the first time was I

(Testimony of Roland H. Richards.)

wish I could remember; that would have been the month of July or in June, I imagine of 1943. All I can remember is the day he brought the meat in. I don't remember the particular day it was. He just brought the meat in and carried it to the ice box and I paid him. There was not very much conversation. I paid him the amount of the invoice and there was that holding charge he told me about, he said he was entitled to that. I imagine I paid him that. I continued to deal with him on that basis about three months, I don't know exactly.

“Q. How often were purchases made by you from the Defendant Flannagan on that basis?

Mr. Katz: Objected to, if the Court please, irrelevant, incompetent and immaterial; it is going far beyond the issues on Count 8 of the information. [16]

The Court: Overruled.

The Witness: I couldn't say.

The Court: Did you answer that?

The Witness: I just couldn't say. I don't know.

Mr. Katz: Exception.”

There is times during that period of time that we purchased something from him every week. There is times that we purchased more than once a week. There were transactions during that period that I didn't pay him the overage. There was times when we would be awfully busy there and that has happened a good many times. We were so busy we couldn't hardly talk to him, he would just bring it in and I would make out the check and he said,

(Testimony of Roland H. Richards.)

“I will come back on the next trip.” And on the next trip I would go ahead and fix up the deal. That is all there was to it. He probably picked up the money that I hadn’t paid him on the previous trip or he would bring other meat in and I would pay him for that. On the previous trip he would have been paid the invoice amount of the meat. I checked to see whether the meat that was billed on Government’s Exhibit No. 9, for identification, had in fact been delivered. I was there the following morning; it was in the ice box.

“Mr. Tolin: I offer Exhibit 9, for identification, in evidence.

Mr. Katz: Objected to, if the Court please; no foundation for it; incompetent, irrelevant and immaterial.

The Court: Overruled: It will be received.

Mr. Katz: Exception noted.

(The document referred to, heretofore marked Government’s Exhibit 9, for identification, was received in evidence.)” [17]

WEST COAST MEAT COMPANY

PHONE NEWPORT BEACH 1790

Newport Heights, Calif., 6/3 1943

Sold to Rich's Mkt No 7668

DESCRIPTION	WEIGHT	PRICE LB.	AMOUNT
1. 15 lbs. Sir	640	24	
2. 3328			155.20
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
TOTAL			

No. 16107 Cr.
W.C.
 VS.
Flammagan
Boots EXHIBIT
 No. 9
 FILED 7/9 1943
 S. M. J. Clerk
 By W. J. Hansen
 D. C.

ADMITTED

(Testimony of Roland H. Richards.)

Cross-Examination

By Mr. Katz:

I have been in the retail business, in my own business about four years. Prior to that I worked in shops owned and operated by others over a period of 15 to 16 years. I have known defendant Flannagan since the end of May, 1943. The 3rd of June, 1943, was the first time I had any business with him. I don't remember that I asked Mr. Flannagan or asked someone to have Mr. Flannagan to come to see me. The only thing I remember is that I was eating down at one of the restaurants and I said, "I sure would like to get hold of some meat." I don't know whether anyone down there bought meat from him or not. During that period of time I let everybody know that I would like to get some meat; I needed it bad. When Mr. Flannagan came to see me he told me that he could not supply me with meat, that he was having a difficult time supplying his customers that he had been doing business with over a period of time. He told me that if I needed meat my best bet was to go down to Vernon or to the other packing house district, and go to the various packing houses until I gathered together some meat. He said something to the effect that he didn't want to take on any customers or accounts. He said that if I did go down to the packing house to get meat it would be cheaper than I could get it from him. He told me that if he were to supply me with meat of any quantity I would have to pay him an overage over and above what

(Testimony of Roland H. Richards.)

he would have to pay the packer. He told me that he charged more than packers did. As to whether he told me that he was permitted to charge more than packers charge I don't remember. I do remember that he told [18] me he was permitted to charge an overage over what the packers could charge for the delivery of meat. He told me that he could make a charge because of the difference between the type of business he operated and the way the packers operated. I was not present in my shop when the delivery represented on Government's Exhibit No. 9 was made; that was my third wedding anniversary. I wasn't in the shop at all at the time that invoice was presented or when it was paid. Because of the fact that I wasn't going to be there I signed some checks in blank so that Mr. Holly Smith, my employee, could fill in the checks and pay whatever had to be paid during that period of time. Mr. Smith received the delivery that was made by Mr. Flannagan on June 3rd. I know that that delivery was paid by check. I returned to my shop the next morning and went into the ice box and checked it. I did not check to determine the amount of the invoice. So far as I know the only payment that was made for the delivery of June 3rd is represented by the check. As to whether I did on June 3rd or some other time pay Mr. Flannagan money in addition to the check that was made by Mr. Smith for the invoice of June 3rd my answer is that I couldn't say, I don't remember. I don't remember making any payment

(Testimony of Roland H. Richards.)

other than the amount shown on the invoice on that particular date because I wasn't there. Sometime subsequent to June 3, 1943, representatives of the Office of Price Administration visited me, I think that was around the first week in July. There were two representatives. The representatives of the Office of Price Administration said I wasn't immune to a charge of Office of Price Administration violations, [19] in other words, that I could be charged. Three Office of Price Administration investigators visited with me at a later time. They took me up to my home and looked at my books. No charges of any kind have been filed against me. No threats or promises have been made to me in connection with my testimony here. Only that those two gentlemen said I probably would be a party to the crime. They did not say that if I would string along with them to get Flannagan they wouldn't do anything to me, not in those particular words. They said that they would see that I got more meat if I would let them know that I needed more meat. Mr. Valance told me that. He said that he would be able to get me more meat; he thought that things would break now and that I could get more meat, and he said that this thing would all clear up. Mr. Gorman of the Office of Price Administration talked with me at that time. It was all so very confusing, I don't remember just exactly what Mr. Gorman said. He said so much so fast I couldn't follow him. Mr. Gorman and Mr. Valance told me they weren't after the little fellow. I don't remem-

(Testimony of Roland H. Richards.)

ber that either of them told me that I was under arrest. They took me to my home to look at my books. They went through my books there. I was permitted to call my attorney when I asked to do so but somebody notified Leo from the shop and he came down. He is my attorney.

Re-Direct Examination

By Mr. Tolin:

I have read Government's Exhibit 11, for identification. It is a statement I gave the Office of Price Administration officers on July 2 of this year.

7/2/43.

This is the statement of P. H. Richards
of 543 So Ohio St. Anaheim. Calif.

This statement is given willingly and
freely to the United States Government
I have been buying meat from
the West Coast Meat Co, for some time.
Several weeks ago I was told by C.
Glennigor that his meat cost him
more, and he would have to charge
me more for meat.

I have paid for the fresh
meat I have purchased from Glennigor
that the invoice called for by
check, the Bonus, or side money
I have paid in cash, always to
C. O. Glennigor.

My wife keeps my books
and she is familiar with the amounts
I have had to pay off, I wish to
change this. My wife does not know
that I have to pay off. I tell her
what amounts of fish I pay out,
and tell her that they are for chickens
fish etc.

over

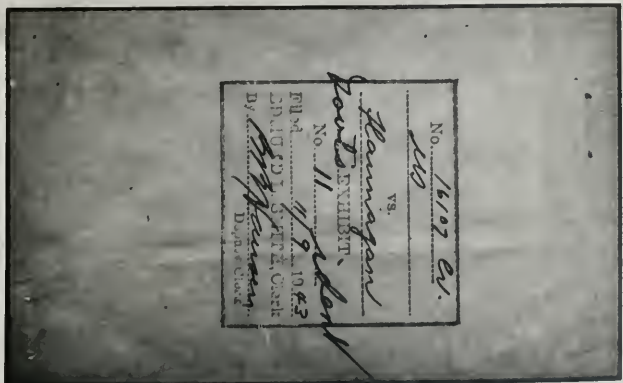
She then enters them in the books in this manner.

I have been forced to pay these amounts of side money, in order to keep my butchery shop open. Mr. Gammion has told me that he had to charge me more for meat because he in turn was forced to pay side money, or extra money to the people he purchased the meat from.

I feel that I am glad this entire matter is over, my mind is made easier, and I feel that I can now engage in the meat business in a clean way. This is the second page, of a two page statement.

George J. Veltman
Witness
S. L. Gorman
Witness

R. H. Richard
543 So. Ohio St. Indian
400 N. Los Angeles St. Indian



(Testimony of Roland H. Richards.)

“Q. By Mr. Tolin: I will ask you now, Mr. Richards, [20] do you recall more fully, since you have read this statement, what those conversations were with Mr. Flannagan?”

Mr. Katz: If the Court please, I am going to object to that. It is not proper redirect examination, not a proper basis for refreshment, and it constitutes an impeachment no matter what it is called.

The Court: Overruled.

Mr. Katz: Exception noted.

Mr. Tolin: Answer, please.

The Witness: Outside of what he told me about this hauling charge, he would charge me an extra hauling charge, and freight, and selection of the beef, he said, he would have to pay the packers a little more, that is, the packers were charging him more for the meat that he got for me.”

Re-Cross Examination

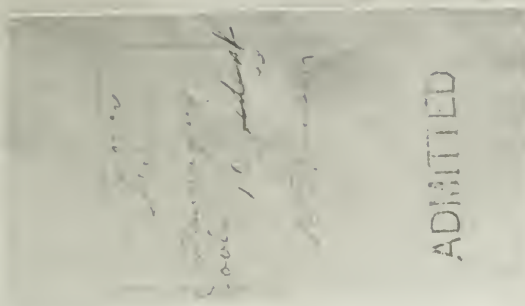
By Mr. Katz:

Mr. Flanagan told me that the packers were charging him more and that he consequently had to charge me more. I know that during this period of time prices were changing, they did go up and down.

HOWARD E. SMITH

called as a witness by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

I was a butcher employed by Roland H. Richards in his market in Anaheim. On June 3, 1943, on that day Mr. Flannagan made a delivery of meat to Mr. Richard's market and delivered the beef to me. I recognize Government's Exhibit No. 9 as the invoice he gave me at that time. I received the meat that is listed on that invoice. I recognize Government's Exhibit No. 10, for identification, as a check Mr. Richards had signed in blank and left with me. I filled in the check, including the amount [20a] and delivered it to Mr. Flannagan at that time. He did not ask me for any other money or thing of value and I positively did not give him any. He did not discuss with me the subject of any other consideration. Government's Exhibit No. 10, for identification, was then offered in evidence by the Government and was received in evidence as Government's Exhibit No. 10.



WEST COAST MEAT CO.



90-369 ANAHEIM BRANCH 90-369

Bank of America

NATIONAL TRUST & SAVINGS ASSOCIATION

No.

ANAHEIM, CALIF.

6/3

1943

PAY TO THE ORDER OF

West coast meat Co

\$ 155.20

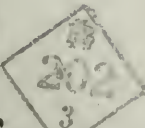
one hundred fifty five and 20/100

(20)

DOLLARS

Rec'd Filed

By B. H. Ruland



(Testimony of Howard E. Smith.)

Cross-Examination

By Mr. Katz:

I worked for Mr. Richards one year, one month and two days. He was out of the shop 65% or 70% of the time. He was in the meat market where his brother was, the grocery store at Newport Beach. When he was away I was in charge of the shop. I received the merchandise delivered to the shop. I recall the delivery of the shipment represented by the invoice which was marked Government's Exhibit No. 9. I accepted the delivery shown by that invoice. Mr. Richards was not present when I paid for that delivery. Mr. Flannagan did not ask for any sum of money or any consideration other than the check for that delivery. He did not at any time ask for any sum or consideration for the delivery he made on June 3; I did not pay him any sum or other consideration for the delivery.

LOUIS M. PICKEL

called as a witness by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

I have engaged in the retail meat business in Anaheim a little over seven years. I was personally in charge of the business. I have known Mr. Flannagan since I acquired the market a little over seven years ago. He was one of my regular suppliers. He delivered meat in a yellow enclosed refrigerator

(Testimony of Louis M. Pickel.)

truck with green trimming. Sometime prior to the first of July, 1943, [21] I had a conversation with defendant Flannagan in my meat market in Anaheim, no one else was present. We talked about the prices to be charged me for beef and lamb item. I said that meat was getting hard to get and I knew that under the circumstances it would cost more and that subsequently I would have to pay more for it. He told me how much more but I don't remember how much he said. I told him I guessed that was the only way out and that it would have to be all right. That was the substance of the conversation.

I had another conversation with him after the one I related and before the first of July, 1943. Mr. Flannagan and myself were the only ones present. Mr. Flannagan said that as the prices changed he would have to pay more and I would have to pay more. He told me how much it would cost and how much he was allowed to charge. I don't remember what it was but it was something over the regular wholesale price which I understood was the ceiling, as freight or something of that kind. The first of July, 1943, was the first time I saw Government's Exhibit No. 7, for identification. It was in Mr. Flannagan's possession at that time. He brought it into my market. I received from Mr. Flannagan at that time the meats listed on that Exhibit. He got them from his truck and carried them into my place. After he carried them in he gave me Government's Exhibit No. 7, for identification,

(Testimony of Louis M. Pickel.)

and at the same time he gave me a piece of paper and told me that was how much I owed him. To my best recollection I did not owe him for any meat other than the meat described on Government's Exhibit No. 7, for identification. It was my practice to pay on delivery. There [22] were a couple of three times I didn't, but it was the general practice. The general practice was followed with respect to this transaction.

Government's Exhibit No. 8, for identification, is the slip that he gave me for collection that day. It was what he was collecting for the meat on Government's Exhibit No. 7, for identification. On Government's Exhibit No. 8, for identification, there were certain figures that are written in pencil and certain figures that are written in ink. I wrote the figures that are in ink and Mr. Flannagan wrote the figures that are in pencil. I wrote the words. He did not write any of the ink portion of Government's Exhibit No. 8, for identification. I wrote that portion. When he handed me Government's Exhibit No. 8, for identification, I paid him \$52.77 cash. \$52.77 was the only money I paid with respect to that transaction, to the best of my recollection. He did not deliver any other meat to me at that time. I checked the meat that was delivered to determine that it was as invoiced on Government's Exhibit No. 7, for identification, and it compared all right with the description on the invoice. As to item 2 of Government's Exhibit No. 7, for identification, I received 10 $\frac{1}{4}$ pounds of beef liver.

(Testimony of Louis M. Pickel.)

The 5 is the number of points per pound. As to item 3 on said Exhibit, I received one-half of a Grade A veal at 5½ points per pound. As to item 4 of said Exhibit, I received 7½ pounds of calf hearts at 5 points a pound. As to item 5 of said Exhibit, I received calf liver at 7 points per pound. As to item 6, I received brains at 2 points per pound and as to item 7, I received lamb at 5 points a pound. I received a 42 pound lamb, Grade A. I received Government's Exhibit No. 8, for [23] identification, from Mr. Flannagan when he brought it to me. He said, "That is how much you owe me today." I paid him \$52.77 at that time. He accepted the money, at the same time he wrote "Paid \$38.93" on Government's Exhibit No. 7, for identification. The Government then offered Government's Exhibits No. 7 and 8, for identification, as Government's Exhibits on the same numbers.

The defendant objected on the ground that there was no foundation for the receiving of Government's Exhibit No. 8, for identification, into evidence.

"Mr. Katz: I object to that, if the Court please. And if I may be heard on my objection, I would like to say this: Count 12 charges the defendant with the issuance of an invoice in connection with the sale of beef and lamb. Count 12 goes on to refer to the invoice stating the total price charged for the beef and lamb, and so forth. The invoice with reference to which the witness has been questioned, and which is now being offered, if the Court please,

(Testimony of Louis M. Pickel.)

is not an invoice that refers to beef and lamb at all. There is no reference to beef and lamb on there. It is not the invoice, or, at least, there is a fatal variance between the invoice referred to, being offered now, and the invoice referred to in Count 12. We object to its receipt, if the Court please, upon that ground; and upon the ground that there is no foundation laid.

“With respect to No. 8 for identification, if the Court please, there is no foundation whatsoever for the receipt of the document, and no evidence has been introduced to establish the necessary proper foundation.

The Court: Objection overruled as to Exhibit 7, for identification.

WEST COAST MEAT COMPANY

PHONE NEWPORT BEACH 1790

Newport Heights, Calif., 7-1 194 3

Sold to P. C. Heller No 7834

DESCRIPTION	WEIGHT	PRICE LB.	AMOUNT
1. 2 Steaks 15	176	23 1/2	27 16 35
2. Ribs	51	10 1/2	26 27 1/2
3. 1/2 lb. 15.5	391	7 1/2	23 16 33
4. C.H. 15	36	7 1/2	20 146
5. C.H. 17	11	1 1/2	55 90
6. B.Y. 2	4	2	10 1/2 25
7. 1/2 lb. 51	214	4 1/2	76 10 92
8.			
9.	885		
10.			38 93
11.			
12.			
13.			
14.			
15.			
TOTAL			38 93

No. 16107 Ex.

662

VS.

Flanagan

Porti EXHIBIT

No. 7

Filed 11/2/43

RECORDED, INDEXED, Clerk

By W. Hansen

Deputy Clerk

ADMITTED

(Testimony of Louis M. Pickel.)

The other Exhibit, I think, is—As I understood your testimony, Mr. Pickel, it was that [24] the handwriting, the pencil handwriting, the figures on Exhibit 8, for identification, were placed there by the Defendant Flannagan; is that right?

The Witness: Yes, sir.

The Court: I don't think the jury should be permitted to see the pen and ink handwriting.

Mr. Tolin: The offer, your Honor, as I intended to make it, and as I now make it, is to offer in evidence only the pencilled portion, and for convenience here I suggest, rather than covering it, that it simply be read to the jury.

The Court: If you gentlemen can stipulate to the reading of those figures that are in pencil handwriting, the evidence that is receivable will be before the Court and jury, and that which is excludable will be excluded.

Mr. Katz: If the Court please, subject to the exception as to the ruling on Exhibits 7 and 8, without waiving such exception——

The Court: That's right.

Mr. Katz: ——I will stipulate it may be read, if your Honor is intending to admit that.

The Court: Yes. The Court is so intending and will do so.

Mr. Katz: All right, your Honor.

The Court: I understand you are agreeable, not waiving your objection, but insisting upon each of them——

Mr. Katz: Yes, your Honor.

(Testimony of Louis M. Pickel.)

The Court: —to have it read to the jury, what the pencilled handwriting on the document is?

Mr. Katz: Yes, your Honor; that is, the figures.

The Court: You may read that portion.

Mr. Tolin: Then I will read that portion and hand [25] the jury, for examination by the jurors, Exhibit 7?

The Court: Yes.

Mr. Tolin: I hand you Exhibit 7, and I will at this time read the admitted portion of Exhibit 8. '5 2 7 7.' "

Cross-Examination

By Mr. Katz:

I have been in the retail meat business in Southern California a little over twenty years. During the seven years I have been in business in Anaheim, Mr. Flannagan has supplied me with approximately every delivery. I require a particular grade of meat; to obtain that grade I arranged to have my meats specially selected for me. I used products within a certain weight range, items that were not too heavy for my particular trade. I required the merchandise to be in good condition from the standpoint of appearance and color. I was fussy about the kind of merchandise I handled in my store. Flannagan took care of all of these things for me over that seven year period.

STANLEY C. GORMAN

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

I am an investigator with the Office of Price Administration and was so employed in June and July of 1943. With an investigator named Klein, I went to defendant Flannagan's home at Newport Beach during the latter part of June or the first of July and had a conversation with him. No force or violence was used, nor any offer of immunity or reward was held out. There were two or three, or perhaps four other people there. There was a young boy and two or three ladies.

"Q. Tell us the conversation you had with the Defendant Flannagan at that time on that subject.

[26]

Mr. Katz: Objected to, if the Court please; no foundation laid; incompetent, irrelevant and immaterial, and no corpus delicti has yet been established.

The Court: Overruled. * * *

Q. By Mr. Tolin: Tell us what was said by all of the parties who participated in the conversation, giving us the substance of it."

The conversation in substance was that Mr. Klein asked the defendant if he was Mr. Flannagan and the defendant stated that he was and that he was doing business under the title "West Coast Meat Company"; that he was the company, that he had no place to store meat on the premises. He was

(Testimony of Stanley C. Gorman.)

asked from whom he purchased meats and he named several packers and stated that he was not required to pay any price to the packers over and above ceiling prices. He was asked to produce his checks and did so. He stated that he operated from a green truck. Defendant Flannagan asked the witness and Klein why the investigator had browbeaten Kilduff into giving a false statement.

At the conclusion of this testimony, Defendant made a motion to strike the entire evidence upon the ground that the same was incompetent, irrelevant and immaterial, and not related to any charges contained in the Information, which motion was denied and exception noted.

Cross Examination

By Mr. Katz:

It is true that I stated to Flannagan, at Flannagan's home; that he wanted some information from him, that we were interested in the peddlers' rights; that if any squeeze had been put on Flannagan by the packers we were interested in protecting Flannagan's [27] rights, but that our primary purposes was to get a list of Flannagan's customers. Flannagan gave us such a list. Flannagan stated in reply to a question that he had not made any purchase in excess of ceiling prices.

At the conclusion of the Government's case, the Defendant made a motion for a directed verdict of acquittal as to the remaining Counts VIII, X, XI and XII, and each of them, upon the ground that the evidence was insufficient to sustain a conviction,

(Testimony of Stanley C. Gorman.)

which said motion as to each of said Counts was denied and exceptions taken.

CLARENCE O. FLANNAGAN

called as a witness by and in his own behalf, having been first duly sworn, was examined and testified as follows:

I am Clarence O. Flannagan who is the defendant in this case. I have lived in Southern California for a period of twenty years. I am now a driver-salesman for the West Coast Meat Company and have been since 1939. I have known Kilduff for two or three years but have not transacted any business with him before June 24, 1943. On that date I visited Kilduff at Kilduff's place of business. Kilduff had been for some *item* trying to get me to come down to Kilduff's Market. Kilduff had called me at my house a time or two and I had had mutual friends contact me and ask me to come down to serve him. When I met Mr. Kilduff, Kilduff told me that he lost his source of supply, particularly of beef and wanted to know if I could supply him with some. I told him that I could not, that I was not getting enough meat to take care of my regular customers. On the 24th of June, 1943, I delivered to Kilduff the items shown on the statement of June 24, which I recognize as Government's Exhibit No. 1. I did discuss with Kilduff the matter of prices [28] to the effect that my price

(Testimony of Clarence O. Flannagan.)

was higher than the packers and that he, Kilduff, could do better if he bought from the packers. I told Kilduff the price I was entitled to charge under the Office of Price Administration ceiling regulation and that this price would be more than he would have to pay to the packers. Kilduff paid me by check for the items reflected in the invoice, Government's Exhibit No. 1. I did not receive any consideration or thing of value except that check from Kilduff. I did not at any time charge, demand, collect or receive any cash or any consideration or thing of value except the check for the items shown in the invoice, Government's Exhibit No. 1. All charges were reflected in the invoice, including delivery charges. On June 24, 1943, before I took the meat into Kilduff's Market, I discussed with Kilduff a matter relating to 7c per pound for meat. In that discussion I stated to Kilduff that if he went to the packing house district quite often he would be able to find a "B" grade of beef, that would suit his purpose just as well as an "A" grade and the difference between the cost of "A" and "B" grades of beef together with the difference in the amount of money that I could charge him for the beef over and above what the packers would charge would amount to as much as 6c or 7c. I do not recall any other mention of 7c. Before I left on the 24th of June, 1943, Kilduff asked me if I could bring him some more beef the next day. On the next day, June 25, I delivered a meat order to Kilduff consisting of the items reflected in the

(Testimony of Clarence O. Flannagan.)

invoice dated June 25, 1943, Government's Exhibit No. 2. Kilduff paid the amount of the invoice by check and I identify [29] Government's Exhibit No. 3 as the check I received. I did not receive any cash or other consideration excepting that check in payment for the items delivered on June 25, 1943. Kilduff stated he wanted more meat the following delivery if I could get it and I told him I would bring it if I could get it. On June 28, 1943, I delivered to Kilduff the items shown and reflected by the invoice dated June 28, 1943, Government's Exhibit No. 4. I recognize Government's Exhibit No. 5 as a check I received from Kilduff at the time I made that delivery. It was in payment of the items on the invoice. I did not at the time of delivery receive any cash or other consideration or thing of value except said check for the delivery made on June 28, 1943, nor did I at that time or any other time receive any other consideration or thing of value for the items reflected on said invoice and delivered to Kilduff. Nor did I charge, collect or receive any cash or other consideration, or thing of value except said check, Government's Exhibit No. 5, for the items delivered on June 28, 1943.

Government's Exhibit No. 4 reflects the total charges that I made for the items delivered on that date and there were no charges paid that were not included in the price set forth on the invoice. In the latter part of June or the first part of July,

(Testimony of Clarence O. Flannagan.)

1943, I received a visit in my home at Newport Beach from two Office of Price Administration investigators whom I did not know at the time, but later learned were Mr. Klein and a Mr. Gorman. I had a conversation with said investigators at that time wherein they told me that they had information that the West Coast Meat Company had violated Office of Price Administration [30] ceiling regulations. I told them that they were mistaken; that there had been no violation on the part of myself or the West Coast Meat Company. The investigators told me it did not matter a great deal, that they were not interested in prosecuting me, that their interest was in trying to get incriminating evidence of some sort against the big packers, that I would be in a position to give them that information or assist, and if I did so there would be no charges placed against me or the West Coast Meat Company. I told them that I had no such information and was in no position to help them get evidence. They told me that if I felt that way about it they would place charges against me and the West Coast Meat Company. They required me to produce my books, which I did, for their inspection. I did not tell either investigator that I was the West Coast Meat Company. Neither of them asked me if I had a fixed place of business or facilities for storing meat, nor did they ask me if there were any partners in the West Coast Meat Company, nor did they ask me if I was the owner of the West Coast Meat Company. I did not tell

(Testimony of Clarence O. Flannagan.)

them that I was the sole owner of the West Coast Meat Company, but said that I was a driver-salesman for said company, and that the sole owner of the West Coast Meat Company was my wife, Laura Flannagan, and that she is a sole trader. I know Mr. Pickel who testified here. I have known him a long time, it must be ten years. Anyway I have transacted business with him continuously since he started business. I transacted business with him practically every trip, every delivery I made. He had a high-grade market and was very particular about the quality of his meat. I selected for him the kind [31] and quality of meat that he used in that market. He used meat and meat products falling within particular weight range and was very particular about that. I selected for him meats of the quality and within the weight range he required for his trade and business. I had a number of conversations with him between the first of the year and July 1st. I recall a conversation with Mr. Pickel in which I told him that his meat was going to cost him more. I don't recall any particular date. That was about the time the Office of Price Administration regulation began *effecting* people and his business and the business I was engaged in. I told Mr. Pickel at that time that our manner of doing business was changing due to the restrictions placed on it by the Office of Price Administration regulations; that we were allowed, that is to say, we had to govern ourselves by a ceiling price

(Testimony of Clarence O. Flannagan.)

established by the Office of Price Administration. Those ceiling prices were different according to the type of business we were in. In our particular case I would be allowed to add certain additions for freight and handling and service, etc., and that his merchandise would cost him more money in the future from me than it would if he could get it from the packers. The price of the packers ceiling and maximum price was less than the price of the West Coast Meat Company. The West Coast Meat Company obtained its meats from the various packers in Vernon. From time to time I talked to Mr. Pickel about different rules and regulations and supplements and supplementary rules put out by the Office of Price Administration and I explained to him what they were.

“Q. Did you at any time in any of the conversations that you had with Mr. Pickel say anything to Mr. Pickel [32] about his paying anything over ceiling?

A. Well, yes; not exactly in those words, however.

Q. What was said about that matter?

A. I tried—I am getting started wrong again.

Q. What did you say?

A. I said to Mr. Pickel at all times that the prices he was paying me for meat was more than the packer's price; that I was entitled and allowed by the regulations of the O. P. A. to charge him more.”

I did not tell Mr. Pickel that I was charging

(Testimony of Clarence O. Flannagan.)

more than the ceiling price of the West Coast Meat Company.

I recognize Government's Exhibit No. 7 as an invoice of the West Coast Meat Company. I delivered the items shown on that invoice to Mr. Pickel. He paid me at the time of delivery in cash. He did not pay me any sum of money in excess of the amount shown on that invoice, Government's Exhibit No. 7, \$38.93. He did not at that time or any other time pay any other consideration or thing of value for the items delivered by me to him on July 1, 1943. With respect to Government's Exhibit No. 8, I state that I have never seen it before. As to the figures 5 2 7 7 on that Exhibit, I state that I don't believe that is my handwriting; it don't look like my handwriting. I have no recollection of it. I do not recall ever having delivered this slip to Mr. Pickel. I haven't the faintest idea what the figures 5 2 7 7 refer to. I have not been involved in any kind of criminal proceedings prior to this, nor have I been in any trouble with any Government agency or authorities prior to this difficulty. I did not at any time to my knowledge sell any meat or meat product in excess of the maximum prices nor did I at any time intend to violate the Maximum Price Regulations. [33]

Cross Examination

By Mr. Tolin:

The first transaction I ever had with Mr. Kilduff was on the 24th of June, 1943. At that time Kilduff told me he was desperate to get meat. At that

(Testimony of Clarence O. Flannagan.)

time I was making purchases regularly from the packers in the Vernon district from Rosen Brothers, Klubniken Packing Company, Clougherty Brothers, Sterling Packing Corporation, Quality Meat Packing Company, and others.

I have been engaged in the meat business for approximately twenty years, during which time I had contact with packers in the Vernon district. At the time I saw Kilduff I told Kilduff I was having trouble getting enough meat to supply my own customers. That was true; I had tried to obtain greater supplies of meat than I was obtaining. I made efforts from every packer in the Vernon district that I dealt with. At that particular time the biggest trouble was the quota they were operating under. In order to get anywhere near the distribution of meat they had to limit the amount they gave any individual or any one concern. No one got near as much as they wanted. I did not go to packers that I hadn't been dealing with regularly and try to increase my stock by trying to purchase from them. That would have been useless. If you could not get enough from the packers you had been buying from they certainly would not take on a new one. At that time I said to Mr. Kilduff that he could probably purchase on better terms from the packers in the Vernon district than he could from me. I recognize Government's Exhibit No. 1 as the first invoice I gave Mr. Kilduff. I wrote out that invoice; I figured the [34] prices that appear on it. I figured the additions that were allowed by a per-

(Testimony of Clarence O. Flannagan.)

son doing business as the West Coast Meat Company and include those additions in those prices. Those additions include a charge for making delivery in that area. I figured the differentials which were allowed, those of the zone and those of the delivery charge and added them to the base price, that and any other additions that we were allowed to make. To the best of my knowledge the prices on Government's Exhibit No. 1 were the ceiling price the West Coast Meat Company was allowed to charge for that day. It is true that the other invoices that have been shown here this morning are the ceiling price, including the extra because of the zone and the delivery charge. There was no other charge that I made any of these men, Kilduff, Pickel or Richards, because of any other service than that which is included in the prices set forth on these several invoices. It was approximately ten years ago when I first started transacting business with Mr. Pickel. I was operating as an independent meat distributor. The business was conducted off the truck. The place of business was the truck. There was a period in 1937 or 1938 that I discontinued business as an individual. C. O. Flannagan was out of business for a few months. I have always considered my home really my place of business, that is where I operate from, that is where my phone is and where I start and finish. The merchandise was always handled off the truck. I had no storage facilities there at home. I reside at 325 Santa Ana [35] Avenue, Newport Beach,

(Testimony of Clarence O. Flannagan.)

with my wife, Laura Flannagan. When Mr. Klein and Mr. Gorman called on me at my home I don't recall that there was any conversation about the West Coast Meat Company. I did not tell them who owned the West Coast Meat Company. I have been employed by the West Coast Meat Company since 1939 when it was set up by Laura Flannagan. Laura Flannagan was the manager of the West Coast Meat Company during June and July, 1943. I made the purchases from the packers; I made the sales to the customers. I did not ever have a stock of meat other than that which was carried on the truck. I am acquainted with the custom of retail meat dealers in purchasing their supply of meat. Generally the price paid to a concern that delivers meat to the retail store and does business from the truck in the way that the West Coast Meat Company did is a higher price than that charged by a packer for delivery of meat at the packer's place of business.

The witness was asked the following question and objection was made and colloquy had as follows:

“Q. During June and July of 1943 did you pay packers or any packer a price above the ceiling price?”

Mr. Katz: Objected to, if the Court please. It is incompetent and irrelevant, has no issue in this case, and the only purpose of that question can be an attempt to prejudice the defendant. It would be a matter of going into crimes and transactions

(Testimony of Clarence O. Flannagan.)

that are not part of this case at all, if the Court please.

Mr. Tolin: May I explain? One of the witnesses testified here yesterday that that was the reason [36] why Mr. Flannagan was obliged to charge him higher prices. At least, that was the reason Mr. Flannagan had related to him as one of the reasons why he would have to charge him higher prices.

Mr. Katz: If the Court please, I regret to say that I don't believe that the statement that Mr. Tolin made is an accurate reflection of the record. I believe he is referring to the statement made by a witness that referred to the conversation that Mr. Flannagan told the witness, Mr. Pickel, I believe it was, that 'I have to pay higher prices' because he was paying higher prices to the packer. But that did not go to any question at all, if the court please, of prices in excess of ceiling or in excess of lawful prices as to packers' prices.

Mr. Tolin: I was referring to the testimony of Mr. Richards.

The Court: Objection overruled.

The Witness: I have lost the question.

The Court: Read it.

(The question was read.)

Mr. Katz: May we note an exception, please?

The Witness: No sir, I did not."

In none of my transactions in which I delivered meat to Mr. Kilduff, which transactions are represented by the invoices, did I deliver to Kilduff, or

(Testimony of Clarence O. Flannagan.)

anyone in his employ, any other memorandum or writing concerning the transaction.

Re-Direct Examination

All sales made since 1939 by me were made for and on behalf of the West Coast Meat Company. I recall testifying upon cross examination that one of the [37] additions included in the prices charged was a delivery charge, that another of the additions was a charge because of the fact that the sales were made in Zone 1 and some of the basic prices are based upon Zone 4; that additional charges are permitted a wholesaler; that there is an addition permitted to be charged in connection with a peddler-seller; that I made additions so that regardless of whether I was classified as a wholesaler, peddler, or independent wholesaler, I would be within the maximum ceiling price.

The Government Rests.

The Defense Rests.

That on the 10th day of November, 1943, the Government and the Defendant having rested their respective cases, the Defendant Flannagan made a motion for a directed verdict as to the remaining counts, namely, Counts VIII, X, XI and XII, upon the ground that the evidence introduced by the Government was insufficient to sustain the charges contained in said Counts VIII, X, XI and XII, and each of them, which said motion was by the trial court denied, and Defendant duly excepted thereto.

That after both sides had announced they rested

their respective cases, the court called counsel into Chambers for the purpose of discussing the question of instructions to be given to the Jury. The proposed instructions filed by the Government and the proposed instructions filed by the Defendant, and each of them, were individually reviewed by the court and counsel, and the legal propositions and questions contained and raised in each individual instruction was thoroughly discussed.

Counsel for the Defendant specifically objected to the trial court charging the Jury, as requested by the Government in its proposed Instructions Nos. 1, 3, 5, 6, 8, 10, 11, 12 and 13.

Counsel for the Defendant, as the basis for his objection, pointed out to the Court that it was the duty of the trial [38] court, in its charge to the Jury, to read to the Jury Maximum Price Regulation No. 169, issued by the Price Administrator of the Office of Price Administration, which governs beef and veal carcasses and wholesale cuts, Counsel for the Defendant contending that it was the exclusive province of the Jury to apply the evidence to the law, as contained in the Regulation, and determine therefrom whether or not the law announced in said regulation had been violated; that incidentally, it was within the province of the Jury to determine the maximum price for a particular type of meat on a particular day in question, and that the Court would, if it charged the Jury as requested by the Government, be usurping the functions of the Jury relative to matters of fact.

The trial court overruled these objections of the Defendant.

Counsel for the Defendant further objected to the giving of the Government's proposed Instruction No. 14, on the ground that the specific intent referred to in the Instruction as required, could not be solely based upon a willful sale at excessive price. and that further, the Instruction endorsed the proposition that the court could charge the Jury specifically as to what the price of meat was on the day in question.

The trial court overruled this objection of the Defendant.

In Chambers, Counsel for Defendant then urged the Court to give his, the Defendant's, Instructions Nos. 2, 5, 6, 8, 15, 16, 17, 22, 23, 24, 25, 32, 35, 36 and 39.

Defendant's requested Instruction No. 23 contained a recitation of Maximum Price Regulation No. 169. Defendant's counsel urged the charging of the Jury in accordance with this Regulation in conformity with his contentions as heretofore set out.

The Court refused to give these numbered instructions, as specifically proposed and requested by Defendant. [39]

The discussion terminated, and the Court took the bench and charged the Jury as follows:

"The Court: Gentlemen of the Jury, the Court instructs you as follows:

The counts of the information, the amended information, with which we are concerned in this case,

gentlemen, are Counts 8, 10, 11 and 12. Those are the only counts in connection with which you are to conduct your deliberations, and they are the only counts as to which the evidence in the case has been directed. I shall read, substantially, each of those counts so that you will have them in mind as the instructions proceed.

Count 8 alleges, substantially, that on or about the 3rd day of June, 1943, the defendant did knowingly, wilfully and unlawfully offer for sale, sell and deliver to H. R. Richards, doing business as Rich's Market, Anaheim, California, one beef carcass, U. S. Grade A, weighing 640 pounds, for the sum of \$225.83; that the maximum price permitted under said Revised Maximum Price Regulation 169, as amended, for said beef carcass, U. S. Grade A, weighing 640 pounds was \$155.20.

Count 10 substantially alleges that on or about the 25th day of June, 1943, the defendant did knowingly, wilfully and unlawfully offer for sale, sell and deliver to James R. Kilduff, doing business as Kilduff's Market, Anaheim, California, one side of Beef, U. S. Grade A, weighing 564 pounds for the price of 29 $\frac{1}{4}$ c per pound, that the maximum price permitted under said Revised Maximum Price Regulation 169, as amended, for said side of beef, U. S. Grade A, weighing 564 pounds, was 22 $\frac{1}{2}$ c per pound.

Count 11 substantially alleges that on or about the [40] 28th day of June, 1943, the defendant did knowingly, wilfully and unlawfully offer for sale,

sell and deliver to James R. Kilduff, doing business as Kilduff's Market, Anaheim, California, one U. S. Grade B beef carcass, weighing 425 pounds for the price of $27\frac{1}{4}c$ per pound, that the maximum price permitted under said Revised Maximum Price Regulation 169, as amended, for said U. S. Grade B beef carcass, weighing 425 pounds, was $20\frac{1}{4}c$ per pound.

And the last count of the amended information, to-wit, Count 12, substantially alleges that on or about the 1st day of July, 1943 the defendant Clarence O. Flannagan sold and delivered to L. M. Pickel, doing business as Pickel's, Anaheim, California, certain beef and lamb cuts; that in connection with and as a part of said sale the defendant did knowingly, wilfully and unlawfully and with intent to evade the maximum prices permitted for said cuts, as established by Revised Maximum Price Regulation 169, as amended, and Revised Maximum Price Regulation 239, as amended, issued pursuant to the Emergency Price Control Act of 1942, furnish to L. M. Pickel, doing business as Pickel's, an invoice stating the total price charged for said beef and lamb cut to be \$38.93, where as in truth and in fact, the defendant then and there well knew, the total price charged and received by the defendant from L. M. Pickel, doing business as Pickel's, for said beef and lamb cuts, was \$52.77, which total price of \$52.77 was in excess of the maximum price permitted for said cuts by said Revised Maximum Price Regulation No. 169, as amended, and Revised Maximum Price Regulation 239, as amended.

Those constitute the charges, gentlemen, and each charge must be considered separately and distinct from the others. [41]

By the filing of the information or accusation no presumption whatsoever arises to indicate that a defendant is guilty, or that he has had any connection with, or responsibility for, the acts charged against him. A defendant is presumed to be innocent at all stages of the proceeding until the evidence introduced shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offenses charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs.

Reasonable doubt is not a mere possible or imaginary doubt or a bare conjecture; for it is difficult to prove a thing to an absolute certainty.

You are to consider the strong probabilities of the case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you. Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in

connection with and as accompanying all the instructions that are given to you.

In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized, because of any feeling of sympathy or other bias, to apply a strained construction, one that is unreasonable, in order to justify a certain verdict when, were it not for such feeling or bias, you would reach a contrary conclusion. And, whenever, after a careful consideration of all of the evidence, your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or by evidence affecting his character for truth, honesty and integrity or his motives; or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his

manner while on the stand, his intelligence, the relations which he bears to the Govern- [42] ment or the defendant, the manner in which he might be affected by the verdict and the extent to which he is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony.

The defendant has offered himself as a witness and has testified in the case. Having done so, you are to estimate and determine his credibility in the same way as you would consider the testimony of any other witness. It is proper to consider all of the matters that have been suggested to you in that connection, including the interest that the defendant may have in the case, his hopes and his fears, and what he has to gain or lose as a result of your verdict. [43]

The interest of a defendant in the result of the action does not deprive him of the benefit of his own testimony. The law makes him a competent witness in his own behalf, and his testimony is entitled to full and fair consideration by you, the same as that of any other witness, and is sufficient in itself, if it raises in your minds a reasonable doubt as to whether the crime or crimes charged was committed by this defendant to entitle the defendant to an acquittal at your hands.

You are not limited in your consideration of the evidence to the bald expressions of the witnesses; you are authorized to draw such inferences from the facts and circumstances which you find have been proved as seem justified in the light of your experience as reasonable men.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which men give their attention to any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment; and while remembering that the defendant is entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict. Jurors are expected to agree upon a verdict where they can conscientiously do so; you are expected to consult with one another in the jury room with the view of reaching agreement without violence to individual judgment of each juror and any juror should not hesitate to abandon his own view when convinced that it is erroneous. In determining what your verdict shall be you are to consider only the evidence before you. Any testimony as to which an objection was sustained, and any testimony which was ordered stricken out, must be wholly left out of

account and disregarded. The opinion of the judge as to the guilt or innocence of a defendant, if directly or inferentially expressed in these instructions, or at any time during the trial, is not binding upon the jury. For to the jury exclusively belongs the duty of determining the facts. The law you must accept from the court as correctly declared in these instructions.

End of Instruction [44]

PLAINTIFF'S INSTRUCTION No. 12

The defendant is here prosecuted for alleged violations of the Emergency Price Control Act of 1942. This law was adopted by the Congress of the United States pursuant to authority given to the Congress of the United States by the Constitution. You are not concerned with its wisdom or unwisdom. It is the law of the land and you must be governed by it in the determination of this case. This law the Congress had the right to pass and it does not violate any of the constitutional rights of any person. The maximum prices at which various meats can be lawfully sold to retail dealers as I shall give them to you have been lawfully fixed under the Emergency Price Control Act of 1942 to which I have just referred, and such lawfully fixed

maximum prices are binding upon you and must be so considered in your deliberations.

Instruction No. 12

Given as Requested:

Given as Modified: √

Refused:

McCORMICK

United States District Judge

[45]

PLAINTIFF'S INSTRUCTION No. ..

It is not necessary for you to determine whom the owner of West Coast Meat Company was at the time of the alleged offenses for the ownership of that Company is not an issue in this case.

Instruction No. √

Given as Requested: √

Given as Modified:

Refused:

McCORMICK

United States District Judge

[46]

Some of the testimony in this case is that of accomplices, and, as there are certain rules of law applicable to such testimony, it is proper for the court to instruct you in reference to them.

An accomplice is one who knowingly and voluntarily, and with common intent with another person, unites with such person in the commission of an offense.

On this subject the court further instructs you, that the law is that accomplices are competent wit-

nesses. That means that the parties have a right to have them sworn. It also implies that, when sworn, you shall consider their testimony, and it is not necessary that the testimony of an accomplice be corroborated in order to justify the jury to convict upon such testimony. Such testimony, however, is always to be received with caution, and weighed and scrutinized with great care by the jury, and the jury should not rely upon it unsupported, unless it produces in their minds full conviction of its truth, and if and when it does so effectuate the mind of jurors it should be accepted. The value, weight and effect of the testimony of accomplices in this case is solely a matter for the jurors' determination.

McCORMICK

J [47]

Evidence of defendant's general reputation for traits or qualities involved in the offences charged in the four counts of the amended information should be considered by you in connection with all of the other evidence in the case, and such evidence may of itself, if believed by you, create a reasonable doubt where otherwise no reasonable doubt would exist in your mind. The weight, value and effect which you may give to character evidence which has been introduced in this case is exclusively for your determination and should be considered in connection with all of the other evidence in the case and if you believe from all the evidence beyond all reasonable doubt that defendant is guilty of the

crime or crimes charged in the applicable counts of the amended information you should so find notwithstanding character evidence.

McCORMICK

J [48]

PLAINTIFF'S INSTRUCTION No. 16

With respect to the maximum prices I have referred to in these instructions you are instructed that the Maximum Price Regulation relating to veal and beef in effect at all pertinent times provided as follows:

“The price limitations set forth in this Revised Regulation shall not be evaded, either by direct or indirect methods, in connection with an offer * * * sale, delivery * * * relating to beef (or) veal * * * or in conjunction with any other commodity or services, or by way of any commission, service, transportation, wrapping, packaging or other charge * * * or by tying agreement or other trade understanding.”

Instruction No.

Given as Requested: √

Given as Modified:

Refused:

McCORMICK

United States District Judge

[49]

PLAINTIFF'S INSTRUCTION No. 13

The Emergency Price Control Act of 1942, provides that any person who wilfully violates certain provisions of the Act shall be guilty of an offense.

Among the provisions of the Act to which this provision applies is the following:

"It shall be unlawful, regardless of any contract, agreement, * * * or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, * * * or otherwise do or omit to do any act, in violation of any regulation or order * * * of any price schedule effective in accordance with the provisions of" this Act.

The prices which I shall read to you as the highest lawful prices in effect on certain days for the several meat items to which I shall *referred* were fixed in accordance with the Emergency Price Control Act of 1942 from which I have just read and those prices, and each and every one of such prices was accordingly fixed by law.

Instruction No. 13

Given as Requested: ✓

Given as Modified:

Refused:

McCORMICK

United States District Judge

[50]

PLAINTIFF'S INSTRUCTION No. 15

The following regulation was in effect at all times pertinent to this case:

“Every person making a sale of any beef carcass, beef wholesale cut, veal carcass, veal wholesale cut, * * * subject to this revised regulation shall furnish to the purchaser at the time of delivery a written statement setting forth the name and address of the buyer and seller; identifying each such item sold; and setting forth the quantity, the grade, including sex identification as to cow, stag, and bull, and the weight thereof, and the price charged and received therefor, including a separate statement of the transportation and local delivery charge * * *”

Instruction No.

Given as Requested: ✓

Given as Modified:

Refused:

McCORMICK

United States District Judge

[51]

PLAINTIFF'S INSTRUCTION No. 1

I am *about* *instruct* you as to what the highest legal prices that could be charged retail meat dealers for beef were on the dates pertinent to the several counts of the Information in this case.

Before giving you such maximum prices, I instruct you that the prices I will read to you are deemed to include the highest legal price for the meat and service charge. On the dates with which you are concerned, it was not lawful for a seller of

meat to a retail meat dealer, to add any charge or bonus, or side money in any amount whatsoever, to the prices I am about to quote to you.

Instruction No. 1

Given as Requested: ✓

Given as Modified:

Refused:

McCORMICK

United States District Judge.

[52]

PLAINTIFF'S INSTRUCTION No. 2

The date alleged in Count VIII of the Information as the time defendant allegedly committed the offense therein charged is June 3, 1943.

Instruction No. 2

Given as Requested: ✓

Given as Modified:

Refused:

McCORMICK

United States District Judge

[53]

PLAINTIFF'S INSTRUCTION No. 3

On the third of June, 1943, the highest price at which it was lawful to offer for sale or to sell and deliver a U. S. Grade A beef carcass to a retail dealer was twenty-four and one quarter cents per pound.

Instruction No. 3

Given as Requested: √

Given as Modified:

Refused:

McCORMICK

United States District Judge.

[54]

DEFENDANT'S REQUESTED INSTRUCTION

No. 34

One of the essential elements of the offenses set forth in Counts 10, 11 and 12 of the information is that the defendant sold beef, and lamb at prices in excess of the maximum prices permitted by Maximum Price Regulations issued by the administration of the Office of Price Administration and in force and effect at the respective times specified in the counts of the Amended Information under consideration. If you are unable to determine from the evidence whether or not defendant sold beef, and lamb at prices in excess of maximum prices permitted therefor, or if there is a reasonable doubt in your mind from all the evidence as to whether any sales defendant may have made were or were not made at prices in excess of maximum prices permitted therefor as alleged in said counts respectively you must find the defendant not guilty.

Given.

McCORMICK

J [55]

PLAINTIFF'S INSTRUCTION No. 4

The date alleged in Count X of the Information as the time defendant allegedly committed the offense therein charged is June 25, 1943.

Instruction No. 4

Given as Requested: ✓

Given as Modified:

Refused:

McCORMICK

United States District Judge.

[56]

PLAINTIFF'S INSTRUCTION No. 5

On the 25th day of June, 1943, the highest price at which it was lawful to offer for sale or to sell and deliver U. S. Grade A beef to a retail dealer was twenty-two and one quarter cents per pound.

Instruction No. 5

Given as Requested: ✓

Given as Modified:

Refused:

McCORMICK

United States District Judge.

[57]

PLAINTIFF'S INSTRUCTION No. 11

On the 25th day of June, 1943, the highest price at which it was lawful to offer for sale or to sell and deliver the following mentioned varieties of meat to a retail dealer were as follows: Oxtail, fourteen and three quarter cents per pound; Brain, ten and

three quarter cents per pound; Heart, eighteen and three quarter cents per pound; Liver, twenty-six and three quarter cents per pound; Tongue, twenty-five and three quarter cents per pound.

Instruction No. 11

Given as Requested: √

Given as Modified:

Refused:

McCORMICK

United States District Judge
[58]

PLAINTIFF'S INSTRUCTION No. 7

The date alleged in Count XI of the Information as the time defendant allegedly committed the offense therein charged is June 28, 1943.

Instruction No. 7

Given as Requested: √

Given as Modified:

Refused:

McCORMICK

United States District Judge
[59]

PLAINTIFF'S INSTRUCTION No. 8

On the 28th day of June, 1943, the highest price at which it was lawful to offer for sale or to sell and deliver a U. S. Grade B beef carcass to a retail dealer was twenty and one quarter cents per pound.

Instruction No. 8

Given as Requested: ✓

Given as Modified:

Refused:

McCORMICK

United States District Judge

[60]

PLAINTIFF'S INSTRUCTION No. 6

I have [illegible] you of a price of twenty-four and one quarter cents a pound as the legal maximum price for a U. S. Grade A beef carcass on June 3, 1943; and a legal maximum price for the same quality beef on June 25, 1943, as twenty-two and one quarter cents per pound.

In order that you will not be confused by the fact that these prices vary, I explain to you that one set of prices was lawful between April 14, 1943 and June 19, 1943. On this latter date, a new price list went into effect. The date alleged with respect to Count VIII is within the period of time covered by one maximum price.

All other pertinent counts of the Information allege dates within the time period covered by the superseding price list.

Instruction No. 6

Given as Requested:

Given as Modified: ✓

Refused:

McCORMICK

United States District Judge

[61]

PLAINTIFF'S INSTRUCTION No. 9

The date alleged in Count XII of the information as the time defendant allegedly committed the offense therein charged is July 1, 1943.

Instruction No. 9

Given as Requested: ✓

Given as Modified:

Refused:

McCORMICK

United States District Judge

[62]

PLAINTIFF'S INSTRUCTION No. 10

On the 1st day of July, 1943, the highest price at which it was lawful to offer for sale or to sell and deliver one half of a Grade A veal carcass to a retail dealer was twenty-three cents per pound.

On the same date, the highest price at which it was lawful to offer for sale or to sell and deliver a Grade A lamb carcass to a retail dealer was twenty-six cents per pound.

Instruction No. 10

Given as Requested: ✓

Given as Modified:

Refused:

McCORMICK

United States District Judge

[63]

DEFENDANT'S PROPOSED INSTRUCTION
No. 13

It is neither criminal nor unlawful for a person to do, or to agree to do, that which the law does not prohibit but recognizes may be lawfully done. So if you believe from the evidence in this case, or if you entertain a reasonable doubt from all the evidence that whatever act or acts was or were done by the defendant was or were done, not with any criminal intent or not for the purpose of doing or performing any unlawful act, but, on the other hand, was or were done honestly and with an honest intent and purpose and in the belief that such act or acts was or were proper and lawful, then and in such event no crime has been committed, and if you so conclude under all of the evidence it will be your duty to find the defendant not guilty.

Given as modified.

McCORMICK

J [64]

PLAINTIFF'S INSTRUCTION No. 14

This is an offense requiring a specific intent, and such intent must be shown to exist beyond a reasonable doubt. The intent on the part of the defendant may be shown by his acts and declarations and by the circumstances surrounding his actions which, when taken together, must prove beyond a reason-

able doubt that the defendant had the specific intent to wilfully sell and deliver meat at a price or prices in excess of the lawful price or prices.

If you are convinced beyond a reasonable doubt that the defendant did in fact sell meat to anyone, or more of the persons named in the several counts of the Information, and that he did in fact charge a price or prices for such meat in excess of the prices I have read to you, and that he at such time or times intended to so sell such meat at a higher price or prices than permitted by the Maximum Price Regulations promulgated under the Emergency Price Control Act of 1942, then you will find that he did so with a specific intent.

Instruction No. 14

Given as Requested: ✓

Given as Modified:

Refused

McCORMICK

United States District Judge

[65]

If you find from the evidence that the defendant did not violate any of the provisions of revised maximum price regulations as alleged in the respective counts of the amended information, or if after considering all of the evidence in the case and the law as stated in the instructions of the court, there is a reasonable doubt in your mind as to whether or not the defendant intentionally violated any of the provisions of an applicable revised maximum price regulation as alleged in the amended informa-

tion and as stated in the instructions of the court, you must find the defendant not guilty.

Given by the Court.

McCORMICK

J[66]

“Gentlemen, when you retire to the jury room you will choose one of your number to act as foreman, and you will proceed to deliberate on this case carefully, cautiously, dispassionately, and impartially, and when you shall reach agreement to be reduced on a blank form which the clerk has prepared for your convenience, have it signed by your foreman at the appropriate place, filled in at the appropriate space or spaces, and return into court with the signed verdict.

“Are there any exceptions, gentlemen?

At the conclusion of the Court’s charge, and before the Jury retired, the Defendant requested the following exceptions to be noted to the giving of Government’s Requested Instructions Nos. 1, 3, 5, 6, 8, 10, 11, 12 13 and 14, which exceptions were allowed by the trial court.

The Defendant then requested that his exceptoins be recorded to the refusal of the trial court to give Defendant’s proposed Instructions Nos. 2, 5, 6, 8, 15, 16, 17, 22, 23, 24, 25, 32, 35, 36 and 39, which exceptions were allowed by the trial court.

“The Court: Swear the Officer to take charge.

The Court: Gentlemen, are there any objections to the jurors having the exhibits which have been received in evidence?

Mr. Katz: No objection, your Honor.

Mr. Tolin: No objection.

The Court: Take these with you. Go upstairs, gentlemen.

(Whereupon the jury retired to deliberate.)”

[67]

DEFENDANT’S REQUESTED INSTRUCTION

No. 2

The mere fact that an information has been filed charging the defendant with a crime does not itself raise any presumption or inference as to the guilt of the defendant. The mere fact that he has been brought into court by the ordinary criminal process and is here on trial, should not be considered by you as any evidence whatsoever of his guilt.

Given

Covered Sufficiently

McCORMICK

J [68]

DEFENDANT’S PROPOSED INSTRUCTION

No. 5

You are instructed that the presumption of innocence is not a mere matter of form, to be disregarded by you at your pleasure, but is an essential, substantial part of the law of the land, and binding upon you in this case, and it is your duty to give the defendant the full benefit of this presumption and to

acquit him, unless the evidence in the case convinces you beyond all reasonable doubt of the guilt of the defendant.

Not Given

Covered Sufficiently

McCORMICK

J [69]

DEFENDANT'S PROPOSED INSTRUCTION

No. 6

The jury is instructed that each essential independent fact necessary to complete a chain or series of independent facts tending to establish a presumption of guilt, should be established to the same degree of certainty as the main fact which these independent circumstances taken together tend to establish, that is, each essential independent fact in the chain or series of facts relied upon to establish the main fact, must be established to a moral certainty and beyond a reasonable doubt and to the entire satisfaction of the jury. The circumstances must all concur to show that the defendant committed the crime and must all be inconsistent with any other rational conclusion and must exclude to a moral certainty and to the entire satisfaction of the jury any other hypothesis but the single one of guilt.

Not Given

McCORMICK

J [70]

DEFENDANT'S PROPOSED INSTRUCTION
No. 8

It is not your duty to look for some theory upon which to convict the defendant, but, on the contrary, it is your duty and the law requires you to, if you can reasonably do so, reconcile any and all circumstances that have been shown with the innocence of the defendant, and so acquit him.

Not Given

Sufficiently Covered by Charges Given

McCORMICK

J [71]

DEFENDANT'S PROPOSED INSTRUCTION
No. 15

If you believe from the evidence in this case that any witness in the case was influenced or induced to become such a witness and to testify in this case by any hope held out that he would not be prosecuted for any reason for offenses committed, then the jury should take such facts into consideration in determining the weight and credit which should be given to the testimony of a witness thus obtained.

Sufficiently covered by the instructions given.

Not Given

McCORMICK [72]

DEFENDANT'S PROPOSED INSTRUCTION
No. 16

You cannot base a verdict of guilt upon extra-judicial oral admissions, or statements of a defendant alone, unless there is other evidence independent of such extra-judicial oral admissions or statements which establishes the body of the crime with which defendant is charged, or what is known as the corpus delicti, and if you do not believe after a consideration of all the evidence that the body of the crime or the corpus delicti is established by evidence other than such extra-judicial oral admissions or statements, then and in that event, you cannot consider such extra-judicial admissions or statements for any purpose.

Not Given

Contains also question of law for the court.

McCORMICK

J [73]

DEFENDANT'S PROPOSED INSTRUCTION
No. 17

In order to convict the defendant upon the evidence of circumstances, it is necessary not only that all the circumstances concur to show beyond a reasonable doubt that a crime was committed as alleged in the information, but that the defendant was the one who committed such crime and that they are inconsistent with any other rational con-

elusion. It is not sufficient that the circumstances prove, coincide with, account for, and therefore render probable the theory sought to be established by the prosecution, but they must exclude to a moral certainty every other theory but the single one of guilt, or the jury must find the defendant not guilty.

Not Given

Case not confined to circumstantial evidence.

McCORMICK

J [74]

DEFENDANT'S REQUESTED INSTRUCTION

No. 22

You are instructed that under and by virtue of Maximum Price Regulations No. 148, 169 and 239, any person who in the course of trade or business buys or receives any carcasses or cuts governed by such regulation is equally as guilty as the seller in the commission of the crime. If you find that any witness or witnesses bought or received such carcasses or cuts, each such witness was a principal and the testimony of each such witness should be received with caution and viewed with distrust and you should not accept it unless it so far harmonizes with the other testimony in the case as to leave in your mind no reasonable doubt of its truth.

Not Given

Covered in charge

McCORMICK

J [75]

DEFENDANT'S REQUESTED INSTRUCTION

No. 23

Not given except last paragraph which is given.

McCORMICK

J

You are instructed that Maximum Price Regulation No. 169, issued by the Price Administrator of the Office of Price Administration, governs beef and veal carcasses and wholesale cuts and, in so far as is material to this case, provides as follows:

Section 1364.401 (a) Beef Carcasses and Wholesale Cuts.

On and after December 16, 1942, regardless of any contract, agreement or other obligation, no person shall sell or deliver any beef carcass or any wholesale cut, and no person shall buy and receive beef carcasses or wholesale beef cuts at a price higher than the maximum price permitted by Section 1364.451; and no person shall agree, offer, solicit or attempt to do any of the foregoing. The provisions of this revised maximum price regulation No. 169 shall not be applicable to sales of beef carcasses or beef wholesale cuts to a purchaser, if, prior to December 10, 1942, such beef carcasses or beef wholesale cuts have been received by a carrier other than a carrier owned or controlled by the seller, for shipment to such purchaser. "Person," "Beef carcasses" and "Beef wholesale cut" are defined in Section 1364.55.

Section 1364.402. Exempt sales.

The provisions of this Revised Maximum Price Regulation No. 169 shall not apply

(a) To sales at retail:

(1) As defined in Section 1364.455 with respect to sales of beef; and

(2) As defined in Section 1364.470 with respect to sales of veal; and

(3) As defined in Section 1364.477 with respect to sales [76] of processed products;

(b) To deliveries of beef made to any political subdivision or agency of any state or of the United States under contracts entered into prior to December 10, 1942: provided that this exemption shall not be construed to permit the upward revision of any prices fixed in such contracts.

Section 1364.406. Evasion.

(a) The price limitation set forth in this revised price regulation shall not be evaded, either by direct or indirect methods, in connection with an offer, solicitation, agreement, sale, delivery, purchase or receipt of, or relating to, beef, veal, or processed products, separately or in conjunction with any other commodity or services or by way of any commission, service, transportation, wrapping, packaging or other charge, or discount premium or other privilege, or by tying agreement or other trade understanding, or by changing the selection of, grading, or the style of dressing, cutting, trimming, cooking or otherwise processing or the canning, wrapping or packaging of beef, veal or processed products, or otherwise: Provided, that the

payment by a buyer to a seller for icing services performed by the seller after April 2, 1943, and before delivery of any beef carcass or wholesale cut or veal carcass or wholesale cut to a railroad whose charges are paid directly to such railroad by the buyer shall not be construed as an evasion of such price limitations, if the charge for such icing services is no higher than the cost actually incurred by the seller in performing such service and in no event, higher than the charge which could lawfully have been made by the railroad if such service had been performed by the railroad.

(b) Specifically, but not exclusively, the following practices are prohibited:

(1) Unnecessarily routing beef or veal through any [77] distribution point in order to obtain a higher zone price or for the purpose of making a higher transportation or local delivery charge.

(2) Falsely or incorrectly grading or invoicing beef, veal, or processed products.

(3) Selling or invoicing kosher beef, k o s h e r veal, or kosher processed products to purchasers who are not bona fide buyers of kosher meat.

(4) Selling or invoicing beef or veal at the prices established for sales by hotel supply houses to buyers other than bona fide purveyors of meals, war procurement agencies, or other government agencies.

(5) Offering, selling or delivering beef, veal or any processed product on condition that the purchaser is required to purchase some other commodity.

(6) Making or receiving a charge for delivery on the basis of a route different from that actually followed and in excess of that permitted for the route by which beef or veal was actually delivered.

(7) Selling or transferring title to cattle or calves by a purchaser thereof at a lower price than was paid for such cattle or calves and/or repurchasing, purchasing or receiving title to dressed carcasses or wholesale cuts derived from such cattle or calves after the cattle or calves have been slaughtered by a custom slaughterer.

(8) Charging, paying, billing, or receiving any consideration for or in connection with any service for which a specific allowance has not been provided in this Revised Maximum Price Regulation No. 169.

Section 1364.411. Duty to Maintain Grades.

No person shall sell, offer to sell, deliver or break any beef carcass or veal carcass, unless each such carcass has been [78] graded in accordance with the provisions of this section. No custom slaughterer shall ship or deliver any beef carcass or wholesale cut, or veal carcass or wholesale cut unless each such carcass or wholesale cut has been graded in accordance with the provisions of this section. Each person shall maintain uniform grades, as specified in paragraph (a) of this section; and shall determine his maximum prices upon the basis of such uniform grades, as provided in paragraph (b) of this section.

(a) Uniform grades.

(1) Beef carcasses and wholesale cuts derived

from steers, heifers and cows shall be graded into the following uniform grades: choice, good, commercial utility, and cutter and canner; except that no cow carcass or wholesale shall be graded choice. Beef carcasses and wholesale cuts derived from bulls and stags shall be graded in the same manner, except that no bull carcass or wholesale cut shall be graded choice or good, and no stag carcass or wholesale cut shall be graded choice. In determining the grade of each beef carcass or beef wholesale cut, the "Specifications for Official United States Standards for Grades of Carcass Beef" shall be used, except that the specifications therein for the two grades, prime and choice, shall be combined and treated as a single grade choice, and the specifications therein for the two grades, cutter and canner, shall be combined and treated as a single grade.

(b) Duty to determine maximum prices on the basis of uniform grades.

The word "grade" as used in Sections 1364.451, 1364.452, 1364.466 and 1364.467 and in paragraph (c) of this section, means any uniform grade referred to in paragraph (a) of this section and shall not be construed to mean the private grade of an individual seller.

Irrespective of the price grading system heretofore used by the seller, it shall be the duty of the seller, except as provided [79] in paragraph (c) (3), to have classified into the uniform grades provided for in paragraph (a) of this section, by an official grader of the United States Department of

Agriculture, the beef carcasses and beef wholesale cuts of cattle slaughtered by the seller or sold by the seller, and then to determine the maximum price for each grade of beef carcass and beef wholesale cut by reference to Sections 1364.451 and 1364.452.

(c) Duty to identify products by sex marks.

The sex identification shall be stamped on all bull and stag carcasses and wholesale cuts. The grade and prescribed sex identification of each beef carcass and whole sale cut, and veal carcass and wholesale cut must appear on the seller's invoice.

(1) The appropriate grade for each uniform grade shall be as follows:

Beef Grade

Choice or AA

Good or A

Commercial or B

Utility or C

Cutter)

Canner) or D

Section 1364.451. Maximum Prices for Beef carcasses and wholesale cuts.

Subject to the pricing instructions contained in paragraph (a), the maximum price of each grade of each beef carcass or wholesale cut shall be the maximum price determined as provided in paragraph (b).

(a) Pricing instructions.

(1) Whenever used in this Revised Maximum Price Regulation No. 169, the term "lower price

zone” means a price zone having a lower zone price, and the term “higher price zone” means a price zone having a higher zone price; the words “lower” and “higher” used in the respective terms shall not be construed to refer to the [80] numerical designation of any zone.

(2) Except for the additions permitted in Schedule III hereof, incorporated herein as Section 1364.454, the zone price shall be the delivered price anywhere within the zone to which such price applies. Schedule I (paragraphs (a) to (j) inclusive) hereof, incorporated herein as Section 1364.452, contains a statement describing the geographical limits of each price zone and the zone prices established therefor.

(3) The applicable zone price shall be the price specified in Schedule I (Section 1364.452) for the zone in which is located the seller’s distribution point:

(i) At which the buyer takes actual physical possession of the meat; or

(ii) From which local delivery to the buyer’s place of business begins; or

(ii) From which the meat, consigned to the buyer, (a) is delivered to a common carrier, other than a railroad, for shipment to the buyer, who pays the shipping charges directly to the carrier or (b) is delivered to a railroad for shipment at the carload rate to the buyer who pays the shipping charges directly to the carrier.

(iv) In the case of a less than carload rail shipment, other than an express shipment to a purveyor

of meals, the applicable zone price shall be the price for the zone in which is located the rail unloading station nearest to the buyers' place of business.

(v) On sales to purveyors of meals the distribution point may be, in addition to those listed, the point at which meat consigned to the buyer is delivered to a railway express company for shipment by express to the buyer who pays the shipping charges directly to the carrier.

(4) Except as permitted in paragraph (1), (m), (n), (o), or (p) of Schedule I (Section 1364.452), regardless of any contract, agreement or other obligation, no person shall sell or deliver any [81] beef or any part or portion of any beef carcass and no person in the course of trade or business shall buy or receive any beef or any part or portion of any beef carcass or a beef wholesale cut unless such beef or part or portion is a beef carcass or a beef wholesale cut as defined in Section 1364.455, for which applicable prices have been established.

(5) On and after April 22, 1943, regardless of any contract, agreement or other obligation, no person shall sell or deliver any ground, chopped or comminuted meat containing any proportion of beef or any miscellaneous beef item and no person in the course of trade or business shall buy or receive any ground, chopped or comminuted meat containing any proportion of beef or any miscellaneous beef item unless such ground, chopped or comminuted meat is ground beef and such miscellaneous beef item is a miscellaneous beef item as defined in Section 1364.452 (p), for which applicable prices have been established.

(b) Maximum price.

The maximum price for each grade of each beef carcass or beef wholesale cut shall be the applicable zone price determined in accordance with the provisions of paragraph (a) of this Section 1364.451 and specified in Schedule I, minus the required deductions, if any, specified in Schedule II, plus the permitted additions, if any, specified in Schedule III.

Section 1364.452. Schedule I. Beef price zones and applicable zone prices.

(a) Zone 1.

(1) Zone 1 includes the following area: Washington, Oregon, California and Nevada.

(2) Beef carcass and beef wholesale cut prices applicable in Zone 1.

Subject to the provisions of paragraph (k) of this section, [82] the Zone 1 price for each grade of each class of beef carcass and beef wholesale cut shall be the price specified therefor in paragraph (d) hereof (the applicable Zone 4 price) plus \$1.75 per cwt.

(2) Beef carcass and beef wholesale cut prices applicable in Zone 4.

Subject to the provisions of paragraph (k) the applicable zone prices for Zone 4 are as follows:

(All prices are on dollars per hundredweight bases; the price for any fraction of a hundredweight shall be reduced accordingly.)

Steer or Heifer	Choice or AA	Good or A.	Commercial or B	Utility or C	Cutter Canner or D	(Bologna Bulls (Equivalent cutter and canner grade
(i) Beef carcass or side.....	\$20.00	19.00	17.00	15.00	12.50	13.00
(ii) Hindquarter	22.25	21.00	18.25	15.75	12.50	13.00
(iii) Forequarter	18.00	17.25	16.00	14.50	12.50	13.00
(iv) Round	21.75	20.50	18.25	15.50		
(v) Trimmed full loin.....	29.00	27.25	22.50	19.25		
(vi) Flank	12.50	12.50	12.50	12.50		
(vii) Flank steak	23.00	23.00	23.00	23.00		
(viii) Short loin	32.00	29.75	24.75	21.50		
(ix) Sirloin	26.50	25.25	20.50	17.50		
(x) Cross cut chuck.....	18.00	17.25	15.75	14.25		
(xi) Regular chuck	19.50	18.25	17.00	15.00		
(xii) Brisket	15.75	15.75	13.75	13.75		
(xiii) Foreshank	11.50	11.50	11.50	11.50		
(xiv) Rib	23.50	22.25	20.50	18.00		
(xv) Short plate	13.50	13.50	12.75	12.75		
(xvi) Back	20.50	19.25	18.00	15.75		
(xviii) Triangle	17.25	16.50	15.25	14.00		
(xviii) Arm chuck	18.25	17.25	16.25	14.50		

The applicable Zone 4 price of each cow carcass or wholesale cut of cutter and canner grade or utility grade shall be the same as the Zone 4 price of the carcass or corresponding wholesale cut of steer or heifer of the same grade; the applicable Zone 4 price of each cow carcass or wholesale cut of commercial grade, or good grade shall be the same as the Zone 4 price of the carcass or corresponding wholesale cut of steer or heifer of commercial grade. [83]

The applicable Zone 4 price of each stag carcass or wholesale cut of cutter and canner grade, utility grade, commercial grade or good grade shall be the same as the Zone 4 price of the carcass or corresponding wholesale cut of steer or heifer of the same grade.

The applicable Zone 4 price of each bull carcass or wholesale cut of utility grade or commercial grade shall be the same as the Zone 4 price of the carcass or corresponding wholesale cut of steer or heifer of the same grade. The applicable Zone 4 price of each bologna bull carcass and wholesale cut, which are equivalent to cutter and canner grade are specified above.

The applicable Zone price of each beef carcass or beef wholesale cut which has not been graded or identified by sex mark (required by paragraph (c) of Section 1364.411) when offered for sale, sold or delivered shall be the price of the lowest-priced carcass or corresponding wholesale cut.

(k) For any beef wholesale cut which has been mis-cut or for any piece or portion of beef which

has been cut in a manner not authorized by this Maximum Price Regulation No. 169, the zone price used for the determination of the maximum price shall be the applicable zone price of the lowest wholesale priced wholesale cut.

(o) (2) The fabricated beef cut zone areas 1 to 10 are identical to the beef zone areas set forth in Schedule I (1364.452).

(3) The applicable prices in Zone 1 for fabricated beef cuts and for ground beef and miscellaneous beef items shall be the prices specified in subparagraphs (4) or (5) or (6) hereof respectively (the applicable zone 3 and 4 price) plus the following Zone 1 . . \$1.75.

(4) The fabricated beef cut prices applicable in Zone 3 and 4 for sales by a hotel supply house to purveyors of meals, [84] subject to the provisions in paragraph (k) of Section 1364.452, substituting for the purpose of this paragraph (o) the term "fabricated beef cut" for the term "wholesale cut" contained therein, are as follows:

Grade

Fabricated Beef Cuts

	Choice or AA	Good or A	Commercial or B	Utility or C
(i) Round, rump and shank off.....	\$30.00	\$28.75	\$24.75	\$20.50
(ii) Boneless rump (butt)	25.00	22.75	21.00	18.75
(iii) Hind shank	11.50	11.50	11.50	11.50
(iv) Boneless round	33.00	31.00	27.25	22.50
(v) Inside (top) round	36.75	34.25	29.75	24.25
(vi) Outside bottom round	36.75	34.25	29.75	24.25
(vii) Knuckle (face)	27.50	27.50	24.25	21.25
(viii) Gooseneck boneless round	32.50	29.75	26.50	24.75
(ix) Strip loin (bone in)	49.50	44.75	36.50	29.00
(x) Boneless strip	59.50	53.75	44.00	34.75
(xi) Trimmed full beef tenderloin	58.25	58.25	49.25	49.25
(xii) Trimmed sirloin tenderloin (butt tenderloin) ...	58.25	58.25	49.25	49.25
(xiii) Trimmed tip tenderloin (short tenderloin)	58.25	58.25	49.25	49.25
(xiv) Boneless sirloin (butt)	36.75	34.25	27.00	21.25
(xv) Top sirloin (butt)	45.75	44.00	35.75	26.25
(xvi) Bottom sirloin (butt)	30.25	27.25	20.75	17.75
(xvii) Boneless chuck	26.75	25.00	23.25	20.50
(xviii) Boneless chuck (shoulder clod out)	26.00	24.25	22.75	19.75
(xix) Shoulder clod	29.00	27.75	25.75	23.00
(xx) Boneless briskets (deckle on)	23.50	23.50	20.25	20.25

	Grade			
	Choice or AA	Good or A	Commercial or B	Utility or C
Fabricated Beef Cuts—(Continued)				
(xxi) Boneless briskets (deckle off).....	\$29.50	\$29.50	\$24.75	\$24.75
(xxii) Oven prepared rib	31.50	29.50	27.25	23.50
(xxiii) Rib short ribs, plate short ribs.....	21.00	21.00	19.25	19.25
(xxiv) Rib, boned, rolled and tied.....	39.25	37.00	34.00	29.50
(xxv) Spencer roll	(1)	(1)	41.50	35.75
(xxvi) Regular roll, (rib eye).....	(1)	(1)	64.50	54.25
(xxvii) Boneless short plate	20.00	20.00	19.00	19.00
(xxviii) Cube steak	22.50	22.50	22.50	22.50
(xxix) Flank steak, scored	25.00	25.00	25.00	25.00
(xxx) Club steaks, bone in	50.00	47.00	38.25	34.00
(xxxi) Boneless strip steaks	61.25	55.25	45.25	35.75
(xxxii) Porterhouse steaks (bone in).....	50.00	47.00	38.25	34.00
(xxxiii) T-bone steaks (bone in).....	50.00	47.00	38.25	34.00
(xxxiv) Boneless sirloin steaks	37.75	35.25	27.75	21.75
(xxxv) Top sirloin steaks	47.00	45.25	36.75	27.00

(1) This grade not permitted to be sold and/or delivered.

(5) The fabricated beef cut prices applicable in zones 3 and 4 for sales by packing or slaughtering plants, packing branch [85] houses, wholesaler's or other selling establishments to purveyors of meals subject to the provisions in paragraph (k) of Section 1364.452, substituting for the purposes of this paragraph (o) the term "fabricated beef cut" for the term "wholesale cut" contained therein, are as follows:

	Grade			
	Choice or AA	Good or A	Commercial or B	Utility or C
Fabricated Beef Cuts				
(i) Round, rump and shank off.....	\$28.25	\$26.50	\$23.25	\$19.25
(ii) Boneless rump (butt)	22.75	20.50	19.25	17.00
(iii) Hind shank	11.50	11.50	11.50	11.50
(iv) Boneless round	30.50	28.50	25.00	20.75
(v) Inside (top) round	33.50	31.25	27.00	21.75
(vi) Outside bottom round	33.50	31.25	27.00	21.75
(vii) Knuckle (face)	26.00	26.00	23.00	20.50
(viii) Gooseneck boneless round	30.25	27.75	24.50	23.00
(ix) Strip loin (bone in)	46.00	41.50	34.50	28.00
(x) Boneless strip	55.25	49.75	41.50	33.50
(xi) Trimmed full beef tenderloin	54.00	54.00	45.00	45.00
(xii) Trimmed sirloin tenderloin (butt tender)	54.00	54.00	45.00	45.00
(xiii) Trimmed tip tenderloin (short tender)	54.00	54.00	45.00	45.00
(xiv) Boneless sirloin (butt)	34.00	31.75	24.75	18.75
(xv) Bottom sirloin (butt)	28.50	26.25	19.75	16.25
(xvi) Top sirloin (butt)	41.75	39.25	31.75	22.25
(xvii) Boneless chuck	25.00	23.50	21.75	19.25
(xviii) Boneless chuck (shoulder clod out)	24.00	22.50	21.00	18.50
(xix) Shoulder clod	28.00	26.50	24.75	22.00
(xx) Boneless brisket	22.00	22.00	18.75	18.75

Grade

Fabricated Beef Cuts—(Continued)	Grade			
	Choice or AA	Good or A	Commercial or B	Utility or C
(xxi) Boneless brisket (deckle off)	\$27.25	\$27.25	\$23.00	\$23.00
(xxii) Oven prepared rib	29.50	27.50	25.50	22.00
(xxiii) Rib short ribs, plate short ribs	19.00	19.00	17.25	17.25
(xxiv) Rib, boned, rolled and tied	36.50	34.50	31.50	27.25
(xxv) Spencer roll	(1)	(1)	38.25	32.75
(xxvi) Regular roll, (rib eye)	(1)	(1)	58.75	49.25
(xxvii) Boneless short plate	18.75	18.75	17.50	17.50
(xxviii) Cube steaks	21.50	21.50	21.50	21.50
(xxix) Flank steak, scored	23.00	23.00	23.00	23.00
(xxx) Club steaks, bone in	46.50	43.50	35.50	31.50
(xxxi) Boneless strip steaks	57.00	51.25	42.75	34.50
(xxxii) Porterhouse steaks (bone in)	46.50	43.50	35.50	31.50
(xxxiii) T-bone steaks (bone in)	46.50	43.50	35.50	31.50
(xxxiv) Boneless sirloin steaks	35.00	32.75	25.50	19.25
(xxxv) Top sirloin steaks	43.00	40.50	32.75	23.00

(1) This grade not permitted to be sold and/or delivered.

Section 1364.453. Schedule II. Amounts which must be deducted from zone prices listed in Schedule I. [86]

As hereinafter provided, the following shall be deducted from the applicable zone prices:

(a) For beef carcasses and beef wholesale cuts not graded by an official grader. For the sale of any beef carcass or beef wholesale cut which does not bear the grade mark and identification of an official grader of the United States Department of Agriculture at the time of sale, the seller shall deduct 12½¢ per cwt. from the applicable zone price.

(b) Carload discount. For all beef carcasses and/or beef wholesale cuts and/or other meat items subject to this subpart B and Sections 1364.453 and 1364.454, delivered in a straight or mixed carload shipment or sold as a part of a straight or mixed carload sale, the seller shall deduct 25 cents per hundredweight from the applicable zone price.

Section 1364.454. Schedule III. Amounts which may be added to zone prices listed in Schedule I. Subject to the conditions hereinafter provided, the following may be added to the applicable zone price:

(a) For transportation and/or local delivery.

(2) For transportation from the point at which the meat was slaughtered in price zone 1 to a distribution point located in the same price zone as the slaughter point, other than another slaughter, packing or processing plant owned or controlled by the same seller, the seller may add the actual cost of transportation computed at the lowest common carrier rate for the method of transportation used, but in no event more than 25 cents per cwt.

(3) For local delivery made within a radius of 25 miles from a slaughter plant, packing house, car-route unloading point, railroad unloading station or branch house, to the place of business of a seller at retail, wholesaler (not owned or controlled by the shipper or consignor), hotel supply house (not owned or [87] controlled by the shipper or consignor), or commercial user, or the designated delivery point of a war procurement agency, or other governmental agency; or

For local delivery made within a radius of 25 miles from the place of business of a wholesaler or hotel supply house, to the place of business of a seller at retail, purveyor of meals, or commercial user, or the designated delivery point of a war procurement agency, or other government agency: the seller may add 25 cents per cwt.

(5) For local delivery made from a slaughter plant, packing house, car-route unloading point, railroad unloading station, or branch house, located in Price Zone 1, to the place of business of a seller at retail, wholesaler (not owned or controlled by the shipper or consignor), hotel supply house (not owned or controlled by the shipper or consignor), or commercial user, or the designated delivery point of a war procurement agency, or other government agency, located more than 25 miles from such shipping point; or

For local delivery made from the place of business of a wholesaler or hotel supply house located in Price Zone 1 to the place of business of a seller at

retail, purveyor of meals or commercial user, or the designated delivery point of a war procurement agency or other government agency, located more than 25 miles from such shipping point: the seller may add the actual cost of local delivery computed at the lowest common carrier rate for the method of delivery used, but in no event more than 50 cents per cwt.

(6) Notwithstanding any of the provisions of paragraphs (a) (1) to (a) (5), inclusive, of this Section 1364.454, nothing therein contained shall be construed to permit a total charge for transportation and/or local delivery from the point at which the meat was slaughtered to the place of business or receiving point of a retail seller, purveyor of meals, war procurement agency, or [88] other governmental agency or commercial user of more than 50 cents per cwt. in Price Zone 1. The transportation and local delivery additions permitted in this paragraph (a) are on a hundredweight basis and the charge for transportation and/or local delivery for any fraction of a hundredweight shall be reduced accordingly. The additions specified in this paragraph (a) for transportation and/or local delivery may be charged: Provided, That the seller shall itemize separately on an invoice to the buyer the amount charged the buyer for transportation and/or local delivery, except that if such separate statement of transportation charges is prohibited by local law the seller shall maintain in his own record of the transaction a separate statement of any addition for transportation or local delivery which is included in the maximum price charged.

(d) Wholesalers' selling addition.

On sales of any beef carcass or beef wholesale cut not obtained through custom slaughtering, a person who at the time of the sale is a wholesaler may add 75 cents per hundredweight to the applicable zone price: Provided, however, That on and after August 9, 1943, no person shall charge the addition permitted by this Section 1364.454 (d) unless by such date such person shall have filed with the appropriate regional office of the Office of Price Administration a certified statement that the person: (1) is engaged in the business of buying beef carcasses and/or beef wholesale cuts for resale other than at retail; (2) does not own or control, in whole or in substantial part, any slaughtering plant or facilities and is not owned or controlled, in whole or in substantial part, by another person who owns or controls in substantial part any slaughtering plant or facilities; and (3) is not a hotel supply house or peddler truck seller within the meaning of this Revised Maximum Price Regulation No. 169.

(f) Boxing. [89]

On sales to a seller at retail, purveyor of meals, war procurement agency, commercial user (not wholesaler, branch house, hotel supply house, etc.) war procurement agency, or other government agency, the seller may add 15c per cwt. for packing in boxes.

(g) Peddler-truck selling addition.

On a peddler truck sale involving delivery of not more than 100 pounds of beef in a total delivery of not more than 150 pounds of meats and meat prod-

ucts in any one day from such peddler-truck to any buyer's store door, a peddler may add to the prices specified in Section 1364.452 (Schedule I) the sum of \$1.25 per cwt. This addition shall be in lieu of any local delivery and/or transportation addition permitted in Section 1364.454.

Section 1364.455. Definitions applicable to beef.

(a) When used in this Revised Maximum Price Regulation No. 169 and when applicable to beef, the term:

(1) "Person" means any individual, corporation, partnership, association or other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any agency of any of the foregoing: Provided, That no punishment provided by this Revised Maximum Price Regulation No. 169 shall apply to the United States or to any such government, political subdivision, or agency.

(2) "Carload" means:

(ii) A shipment by motor truck or trucks to a single delivery point of fifteen thousand pounds or more of fresh or frozen wholesale meat cuts and/or cured meat cuts, meat or processed products and/or carcasses, or any combination of the foregoing, as a single bulk sale transaction; and

(iii) Any single bulk sale transaction wherein the buyer takes delivery at the seller's place of business of fifteen [90] thousand pounds or more of fresh or frozen wholesale meat cuts and/or cured meat cuts, meat or processed products and/or carcasses, or any combination of the foregoing.

(3) "Beef" means meat derived from the carcasses of bovine animals which does not qualify as veal as defined in Section 1364.470 (3) of this regulation.

(4) "Car-route unloading point" means any point on a car route at which a stop is made for the purpose of transferring meat to the possession of the buyer or to a truck for local delivery to the buyer.

(5) "Distribution point" includes a packing or slaughtering point, packer's branch house, wholesaler's or jobber's or hotel supplyhouse's warehouse, car route unloading point, or railroad unloading station.

(6) "Local delivery" means delivery by the seller otherwise than by rail, commencing at the seller's distribution point, or in the case of car routes, at the car unloading point and continuing to the buyer's place of business or other point of delivery.

(8) "Beef carcass" means and is limited to the dressed carcass side or sides of beef which shall be dressed with a first and second tail (caudal) vertebrae, kidney knob or knobs and hanging tender left on. The beef carcass shall not be broken in any other manner than provided in paragraph (a) (9) of this Section 1364.455.

(9) "Beef wholesale cut" means and is limited to any of the following cuts meeting the following minimum specifications, derived from the beef carcass but excluding the offal and any item not included herein (all measurements prescribed herein

shall be made with a rigid straight ruler. All cuts shall be made according to the definite guides and measurements specified. Ribs are designated as first to thirteenth, inclusive, counting as the first [91] rib the one which is nearest the neck end of the side.)

(i) "Hind quarter" means the posterior portion of the side remaining after the severance of the twelfth rib forequarter from the side and comprising the round, full loin, including the thirteenth rib, flank, kidney and hanging tender all in one piece, which posterior portion shall be obtained by cutting the beef side between the twelfth and thirteenth ribs, keeping the knife firmly against the twelfth rib while cutting the length of the rib to the point at the end of the rib where the rib joins the rib (costal) cartilage, from which point passing through the cartilage and meat of the flank and short plate in the same straight line, completing the cut.

(ii) "Forequarter" means the anterior portion of the side remaining after the severance of the one-rib hind quarter from the side and comprising the rib, regular chuck, brisket, short plate and foreshank all in one piece, which anterior portion contains the first to the twelfth rib, inclusive. All heart (mediastinal) fat, but no other fat, shall be removed from the forequarter. The skirt (diaphragm) shall not be removed from any cut or part of the forequarter to which it is attached.

(13) "Wholesaler" means a person other than a hotel, supply house or peddler-truck seller who buys beef carcasses and/or beef wholesale cuts for resale other than at retail and who does not own

or control, in whole or in substantial part, any slaughtering plant or facilities and is not owned or controlled, in whole or in part, by another person who owns or controls in substantial part any slaughtering plant or facilities.

(14) "Sales at retail" means sales to the ultimate consumer: Provided, That no wholesaler, processor, packer, slaughterer, branch house, car route, hotel supply house, purchaser for retail, commercial user, purveyor of meals, war procurement agency, or other government agency, shall be deemed to be an ultimate consumer, [92] except that a sale to a purveyor of meals on usual terms by a retailer, at least eighty percent of whose sales of meat during the preceding calendar month were made to ultimate consumers, shall be deemed a sale at retail.

(15) "Peddler-truck sale" means a sale of beef from a truck by a person who purchases beef at or below the maximum price from a seller with whom he has no other financial affiliation or relationship, who takes a delivery at the seller's place of business, and who does not sell or deal in meat in any manner other than sales out of stock carried in a truck, owned and driven by him; Provided, that the first record of the transaction is made by the salesman concurrently with the delivery of the products sold.

(b) (2) "Purveyor of meals" means:

(i) Any restaurant or hotel, cafe, cafeteria or other establishment which purchases meats and where meals, food portions or refreshments are served for a consideration. [93]

DEFENDANT'S REQUESTED INSTRUCTION

No. 24

You are instructed that if you find as a fact that the Revised Maximum Price Regulation No. 169 heretofore read to you, is so framed, worded, drawn or set forth as to be incomprehensible or unintelligible to a person of ordinary understanding and intelligence, then you must find the defendant not guilty of violating the provisions of said Maximum Price Regulation No. 169.

Not given.

McCORMICK

J [94]

DEFENDANT'S REQUESTED INSTRUCTION

No. 25

You are instructed that if you find Revised Maximum Price Regulation No. 169 so ambiguous, indefinite, uncertain and unintelligible that it cannot be understood or comprehended with a reasonable degree of certainty by a person of ordinary intelligence and understanding, you must find the defendant not guilty.

No application.

Not given.

McCORMICK

J [95]

DEFENDANT'S REQUESTED INSTRUCTION

No. 32

You are instructed that if you find from the evidence that the defendant did not make the sales

charged in the information, you must find the defendant not guilty.

Not given.

Too general counts.

Change "offer to sell" as well as "sales."

McCORMICK

J [96]

DEFENDANT'S REQUESTED INSTRUCTION

No. 35

You are instructed that if you are unable to determine from the evidence the maximum prices permitted by Maximum Price Regulations No. 148, 169 and 239 for the grade, type and kind of beef, pork and lamb, charged to have been sold by defendant, or if there is a reasonable doubt in your mind as to what were the maximum prices permitted therefor by such regulation on the date of each sale defendant is charged to have made, you must find the defendant not guilty.

Not given.

McCORMICK

J [97]

DEFENDANT'S REQUESTED INSTRUCTION

No. 36

If you find from the evidence that no maximum price has been established by Revised Maximum Price Regulation No. 169 for the type or kind or grade of beef carcasses or wholesale cuts alleged, which defendant may have sold or delivered, if any, you are instructed that you must find the defend-

ant not guilty of violating Revised Maximum Price Regulation No. 169.

Not given.

McCORMICK

J [98]

DEFENDANT'S PROPOSED INSTRUCTION

No. 39

If, after a consideration of the whole case, any juror shall entertain a reasonable doubt of the guilt of the defendant, it is the duty of such juror so entertaining such reasonable doubt to vote for a verdict of "not guilty".

The defendant is presumed to be innocent until proven guilty; that presumption accompanies him throughout the trial; it goes with you to your retirement to consider your verdict and operates until you have arrived at a verdict. This presumption will avail to acquit the defendant unless it be overcome by sufficient proof of his guilt to convince you, and each of you, to a moral certainty and beyond all reasonable doubt of his guilt. You must examine the evidence in the light of presumption of innocence, and unless you find the evidence sufficiently strong to overcome this presumption, and, further, to satisfy you beyond all reasonable doubt of the guilt of the defendant, he is entitled to a verdict of acquittal at your hands.

Not given.

Sufficiently instructed on principle.

McCORMICK

J [99]

On November 11, 1943, the Jury returned a verdict of guilty as to the charges contained in Count X, and not guilty as to Counts VIII, XI and XII.

The Court fixed November 30, 1943, as the time for pronouncement of judgment and sentence, and on November 30, 1943, the Court pronounced judgment and sentence on said Count X, imposing a fine in the sum of \$1,000.00, and imprisonment in jail, for a period of six months, which sentence of imprisonment was suspended and the Defendant placed on probation for a period of one year.

On December 4, 1943, Defendant filed his notice of appeal from said judgment. On December 11, 1943, the court made an order staying execution and allowing Defendant to remain on bail pending appeal. Contemporaneously Defendant deposited \$1,000.00 in the registry pending appeal as provided for by law in such cases.

On December 24, 1943, the court, upon application of Defendant, made an order extending the time for lodging the proposed Bill of Exceptions and Assignments of Error to and including the 20th day of January, 1944.

Thereafter, the following Stipulation was entered into:

“In the United States Circuit Court of Appeals
for the Ninth District

No. 10629

“CLARENCE O. FLANNAGAN,

Appellant,

UNITED STATES OF AMERICA,

Appellee.

STIPULATION

Whereas, the Government's and the defendant's exhibits in evidence in the above entitled action, which are on file in the office of the Clerk of the United States District Court, Southern District of California, Central Division, are in many instances very difficult, and in some cases impossible to reproduce either by [100] typewriting or by printing, and

“Whereas, the exhibits contain matters, which both parties desire the Court to see in their original form, and

“Whereas, some of said exhibits contain notations in the handwriting of various persons which both parties believe should be certified directly to the United States Circuit Court of Appeals for the Ninth Circuit by the District Court for the purposes of this appeal, and

“Whereas, both the appellant and appellee desire to avoid the expense of copying all of these bodily into the Bill of Exceptions,

“Now, Therefore,

“It Is Hereby Stipulated and Agreed by and be-

tween the appellant Clarence O. Flannagan, and the appellee, United States of America, by and through their respective attorneys, subject, nevertheless, to the approval of the United States Circuit Court of Appeals for the Ninth Circuit, as follows:

“1. That such and all of the hereinafter mentioned and designated exhibits in evidence, which are herein referred to respectively by the numbers and letters given by them by the Clerk of said District Court at the time of the trial herein, may be deemed by reference to be incorporated in the Bill of Exceptions both generally and respectively where and wherever references are made to them by such numbers in the body and context of said Bill of Exceptions to the same effect and purport as though each and all of said exhibits were fully set forth, word for word, figure for figure, in said Bill of Exceptions. [101]

“2. That the District Court may, after passing upon appellee’s proposed amendments thereto, sign and settle said Bill of Exceptions, and may include therein a copy of this Stipulation in lieu of including therein, either in substance or in full copies of each and all of the hereinafter designated exhibits in evidence, and that thereupon, each of said exhibits shall be deemed to be included in said Bill of Exceptions to the same effect and purport as though each and all of said exhibits were fully set forth therein as aforesaid.

“3. That the exhibits to be so included are as follows:

Government's Exhibit No. 1

“ “ “ 2

“ “ “ 3

“ “ “ 4

“ “ “ 5

“ “ “ 6

“ “ “ 7

“ “ “ 8

“ “ “ 9

“ “ “ 10

“ “ “ 10

Defendant's Exhibit No. A

“4. That the United States District Court in and for the Southern District of California may make an order that all of the foregoing designated exhibits be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and for the safe-keeping, transportation, and return thereof, at the cost of the appellants, to be paid to the Clerk of the District Court upon demand.

“5. This stipulation in nowise constitutes a waiver of any objections and exceptions to the introduction of any exhibits by the District Court.

[102]

“Dated: March 9, 1944.

“CHARLES H. CARR

United States Attorney

JAMES M. CARTER

Asst. United States Attorney

ERNEST A. TOLIN

Asst. United States Attorney

JOHN E. GLOVER

Attorney for Defendant and
Appellant

“It Is so Ordered:

.....

.....

Judge of the United States
Circuit Court of Appeals
for the Ninth Circuit.”

CONCLUSION

Inasmuch as the matters above set forth do not fully appear in the record and in the judgment roll, the Defendant, Clarence O. Flannagan, tenders this, his Bill of Exceptions, and prays that the same may be signed and approved by the Honorable Paul J. McCormick, Judge of this Court.

Dated: This 15th day of March, 1944.

CANTILLON & GLOVER

By RICHARD H. CANTILLON

By R. A. G.

Attorneys for Defendant

The foregoing Bill of Exceptions has been examined and is approved.

Dated: This 14 day of March, 1944.

CHARLES H. CARR

United States Attorney

By ERNEST A. TOLIN

Assistant United States At-
torney

Attorneys for the Govern-
ment-Plaintiff [103]

The foregoing Bill of Exceptions, together with the Exhibits therein mentioned and made a part hereof by Stipulation, contains all the evidence adduced on the trial of this cause, and with correction on p. 6, l. 15 made by me to conform to transcript of official reporter correctly shows the various proceedings during the trial, as well as subsequent thereto. The same being true and correct, it is accordingly settled and allowed as a true Bill of Exceptions in this cause.

Dated: This 15th day of March, 1944.

PAUL J. McCORMICK

Judge of the United States
District Court

[Endorsed]: Filed Mar. 15, 1944.

[Endorsed]: No. 10629. United States Circuit Court of Appeals for the Ninth Circuit. Clarence C. Flannagan, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed April 15, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeal
for the Ninth Circuit

Docket No. 10629

CLARENCE O. FLANNAGAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

POINTS ON WHICH APPELLANT INTENDS
TO RELY ON APPEAL, AND DESIGNA-
TION OF PARTS OF THE RECORD
WHICH APPELLANT BELIEVES NEC-
CESSARY FOR A CONSIDERATION
THEREOF

(RULE 19)

In conformity with the provisions of sub-division
6 of Rule 19 of Rules of Practice of the United

States Circuit Court of Appeals, for the Ninth Circuit, Appellant, Clarence O. Flannagan, sets out:

I.

POINTS ON WHICH APPELLANT INTENDS
TO RELY ON APPEAL

The points on which Appellant, Clarence O. Flannagan, intends to rely on appeal are as follows:

1. Each and every Assignment of Error set out by Appellant, Clarence O. Flannagan, in the document designated, "Assignments of Error", filed by said Appellant.

II.

DESIGNATION OF PARTS OF RECORD
WHICH APPELLANT BELIEVES NEC-
ESSARY FOR A CONSIDERATION
THEREOF

1. For the consideration of the points upon which Appellant intends to rely on appeal, it is designated that the entire record as certified to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, by the Clerk of the United States District Court for the Southern District of California, Central Division, be printed.

Dated: This 24th day of April, 1944.

CANTILLON & GLOVER

By RICHARD H. CANTILLON

Attorneys for Appellant,

Clarence O. Flannagan

Received copy of the within Points on Which Appellant Intends to Rely on Appeal, Etc., this 24th day of April, 1944.

CHARLES H. CARR,

United States Attorney

By JAMES H. CARTER

Assistant United States At-
torney

By M. WENTWORTH

Attorneys for Plaintiff-
Government

[Endorsed]: Filed April 26, 1944. Paul P.
O'Brien, Clerk.

